

2-17-2011

Bennett v. Patrick Clerk's Record v. 2 Dckt. 38138

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Vol. 2 of 4

**SUPREME COURT
OF THE
STATE OF IDAHO**

Mathew R. Bennett and

Benjamin L. Walton

Plaintiffs-Appellants

vs

LAW CLERK

Nancy Patrick

Defendant-Respondent

Hon. David C. Nye District Judge

Appealed from the District Court of the Sixth
Judicial District of the State of Idaho, in and for
Bannock County.

Charles Johnson

JOHNSON OLSON CHARTERED

Attorney X For Appellant X

Brendon C. Taylor

MERRILL & MERRILL, CHARTERED

Attorney X For Respondent X

FILED - COPY
Filed this _____ day of _____

2008

FEB 17 2011

Clerk

Deputy

38138

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VOLUME III

Mathew R. Bennett, Benjamin Lloyd Walton vs. Nancy Patrick

| Date | Code | User | Judge |
|------------|------|---------|---|
| 11/6/2008 | LOCT | MARLEA | Clerk's Vault |
| | NCPI | MARLEA | New Case Filed-Personal Injury |
| | SMIS | MARLEA | Summons issued to : Nancy Patrick |
| | COMP | MARLEA | Complaint Filed |
| | | MARLEA | Filing: A - Civil Complaint for more than \$1,000.00 Paid by: johnson olson Receipt number: 0041697 Dated: 11/6/2008 Amount: \$88.00 (Check) For: |
| | ATTR | CAMILLE | Plaintiff: Bennett, Mathew R. Attorney Retained L Charles Johnson |
| | ATTR | AMYW | Plaintiff: Walton, Benjamin Lloyd Attorney Retained L Charles Johnson |
| 11/20/2008 | | CAMILLE | Return of Service - srvd on Nancy Patrick o n 11-13-08 |
| 11/28/2008 | | MARLEA | Filing: 17 - All Other Cases Paid by: merrill and merrill Receipt number: 0044418 Dated: 11/28/2008 Amount: \$58.00 (Check) For: Patrick, Nancy (defendant) |
| | NOAP | CAMILLE | Notice Of Appearance; aty Brendon Taylor for Def. |
| | ATTR | CAMILLE | Defendant: Patrick, Nancy Attorney Retained Brendon C Taylor |
| 12/4/2008 | ANSW | CAMILLE | Answer and Demand for Jury Trial; aty Brendon Taylor for Def. |
| | NOTC | CAMILLE | Notice of service - Defs First set of Interrog. and Request for Production of Documents to Plntfs; aty Brendon Taylor for defs |
| 12/22/2008 | HRSC | CAMILLE | Hearing Scheduled (Scheduling Conference 01/26/2009 09:15 AM) |
| 1/23/2009 | NOTC | CAMILLE | Notice of service - Plntfs First set of Interrog Req for Production of documents and Req for Admissions to Def : aty C/Johnson |
| 1/26/2009 | INHD | AMYW | Hearing result for Scheduling Conference held on 01/26/2009 09:15 AM: Interim Hearing Held |
| 2/11/2009 | ORDR | DCANO | Order Setting Pre-Trial and Order Setting Jury Trial; s/J. Nye on 2-11-09. Cert. Mailed to Counsel on 2-11-09. s/A.Wegner on 2-11-09. |
| | HRSC | DCANO | Hearing Scheduled (Pretrial Conference 05/17/2010 11:00 AM) |
| | HRSC | DCANO | Hearing Scheduled (Jury Pretrial 06/02/2010 09:00 AM) |
| 2/20/2009 | NOTC | CAMILLE | Notice of service - Defs Answers and responses toPlntfs ; aty Brendon Taylor for def |

Mathew R. Bennett, Benjamin Lloyd Walton vs. Nancy Patrick

| Date | Code | User | Judge |
|------------|------|---------|--|
| 2/25/2009 | NOTC | CAMILLE | Notice of service - Plaintiff Bennetts Answers to Defendants First set of Interrog and Requests for Production of Documents to Plaintiffs and the original Plaintiff Waltons Answers to Defs First set of Interrog and req for Production of documents to plntfs : aty Charles Johnson |
| 4/13/2009 | | CAMILLE | Motion for Summary Judgment; aty Charles Johnson |
| | | CAMILLE | Motion to compel; aty Charles Johnson |
| | | CAMILLE | Notice of hearing; on Motion to Compel on 5-11-09 @ 10am: a ty Charles Johnson |
| 4/14/2009 | | CAMILLE | Notice of hearing; on Motion for Summary Judgment, set for 5-11-09 @ 10am: aty Charles Johnson |
| 4/27/2009 | | CAMILLE | Defendants Response and Memorandum in Opposition to Plntfs Motin for Summary Judgment; aty Brendon Taylor for def |
| | | CAMILLE | Affidavit of Nancy Patrick ; aty BrendonTaylor |
| | | CAMILLE | Affidavit of Brendon Taylor for def. |
| | | CAMILLE | Notice of service - Defs First Supplemental Answers and Responses to Plntfs first set of Interrog. , req for Production and requests for Admission and this notice; aty Brendon Taylor for def |
| 5/4/2009 | | CAMILLE | Defs Response and Memorandum in Opposition to Plntfs Motion to Compel; aty Brendon Taylor for def |
| | | CAMILLE | Affidavit of Jared A Steadman; aty Brendon Taylor for def |
| 5/6/2009 | | CAMILLE | Response in Support of Plntfs Motin for Summary Judgment; aty C/ Johnson for plntf |
| 5/11/2009 | | CAMILLE | Plaintiffs Reply to Defs Response and Memorandum in Opposition to Plntfs Motin for Compel; aty Charles Johnson for plntf |
| 6/19/2009 | | CAMILLE | Notice of Deposition of Defendant Nancy Patrick on 7-15-09 @ 9am: aty Charles Johnson for plntf |
| | | CAMILLE | Minute Entry and Order; court DENIED without prej Plntfs Motin for Summary Judgment; J Nye 6-19-09 |
| 9/22/2009 | | CAMILLE | Notice of Depo of Nancy Patrick on 9-24-09 @ 9am: aty Charles Johnson for plntfs |
| 11/19/2009 | | CAMILLE | Motion for Expedited Trial setting, small lawsuit resolution act proceedings, and Mediation; aty Charles Johnson for plntf |
| | | CAMILLE | First Amended and Renewed Motion for Summary Judgment; aty Charles Johnson |

Mathew R. Bennett, Benjamin Lloyd Walton vs. Nancy Patrick

| Date | Code | User | Judge |
|------------|------|---------|--|
| 11/19/2009 | NOTC | DCANO | Notice of Hearing on Motion for Summary Judgement; December 21, 2009 at 10:00 AM. |
| 12/21/2009 | | CAMILLE | Affidavit of Brendon Taylor; aty Brendon Taylor for def. |
| | | CAMILLE | Order for Mediation; J Nye 12-21-09 |
| 1/4/2010 | | CAMILLE | Order granting Plaintiffs Motion for Summary Judgment on Liability; J Nye 1-4-2010 |
| 1/6/2010 | | CAMILLE | Motion for costs and attys fees on summary Judgment as to Liability; atyCharles Johnson |
| | | CAMILLE | Memorandum of Costs and Affidavit of Charles Johnson in support of Motion for costs and fees; aty Charles Johnson for plntf |
| 1/12/2010 | | MEGAN | Miscellaneous Payment: Copies Paid by: Lloyd Jones Receipt number: 0001299 Dated: 1/12/2010 Amount: \$20.00 (Credit card) |
| | | MEGAN | Miscellaneous Payment: Technology Cost - CC Paid by: Lloyd Jones Receipt number: 0001299 Dated: 1/12/2010 Amount: \$3.00 (Credit card) |
| 1/15/2010 | | CAMILLE | Defendant objectijon to Plntfs Motion for Costs and Attys Fees on Summary Judgment as to Liability; aty Brendon Taylor for def |
| 2/4/2010 | | CAMILLE | Plaintiffs Disclosure of Fact and Expert Witnesses; aty Charles Johnson |
| | | CAMILLE | Notice of hearing; on Plntfs Motion for Costs and ATtys Fees set for 2-16-2010 @ 10:30am: aty Charles Johnson for plntf |
| | HRSC | AMYW | Hearing Scheduled (Motion 02/16/2010 10:30 AM) |
| 2/12/2010 | | AMYW | Plaintiff's Response to Defendant's Objection to Plaintiffs' Motion for Costs and Attorney Fees on Summary Judgment as to Liability; /s/ Charles Johnson, atty for Plaintiffs |
| | NOTC | AMYW | Notice of Service; Plaintiff's Second Set fo Interrogatories, Requests for Production of Documents and Requests for Admissions; /s/ Charles Johnson, atty for Plaintiffs |
| 2/16/2010 | DCHH | AMYW | Hearing result for Motion held on 02/16/2010 10:30 AM: District Court Hearing Held Court Reporter: Waived Number of Transcript Pages for this hearing estimated: Less than 100 pages. |
| 2/22/2010 | MEOR | AMYW | Minute Entry and Order; parties came for hearing on Plaintiff's Motion for Costs and Attorney Fees; court denied the plaintiff's motion under Rules 56 & 11, the court took the matter under advisement as to Rule 36 and will issue a decision within 30 days; /s/ J Nye, 2-22-10 |
| 3/4/2010 | | CAMILLE | Defendants disclosure of Lay and Expert Witnesses; aty Brendon Taylor |

Mathew R. Bennett, Benjamin Lloyd Walton vs. Nancy Patrick

| Date | Code | User | Judge |
|-----------|------|---------|---|
| 3/12/2010 | | CAMILLE | Decision on Costs and Attorney Fees; (Plaintiffs Motion for Costs and Attorney Fees on Summary Judgment is DENIED, without prej: J Nye 3-12-2010 |
| 3/17/2010 | | CAMILLE | Notice of Service - Defendants Answers and Rspnses to Plaintiffs Second set of Interrog, Requests for Production and Requests for Admission; and this Notice; atyBrendon Taylor for Defendants |
| 4/22/2010 | MOTN | AMYW | Motion to Compel; /s/ Charles Johnson |
| | NOTC | AMYW | Notice of Hearing on Plaintiffs' Motion to Compel; /s/ Charles Johnson, atty for Plaintiff |
| | HRSC | AMYW | Hearing Scheduled (Motion to Compel 05/05/2010 01:30 PM) |
| | NOTC | AMYW | Notice of Mediation; /s/ J Brown |
| 4/27/2010 | | CAMILLE | Notice of Deposition of Dr. Evan Holmstead Recorded by Audio Video Means; on 4-30-2010 @ 11:30 am atyCharles Johnson for plntf |
| | | CAMILLE | Notice of Deposition of Dr. Richard Maynard Recorded by Audio Video Means on 5-7-2010 @ 11:30 am: |
| 4/29/2010 | | CAMILLE | Notice of Deposition of Dr. Matthew Williamson Recorded by Audio Video Means: aty Charles Johnson for plntf |
| 4/30/2010 | | CAMILLE | Notice of Service - Defendants Third Supplemental Answers and Responses to Plaintiffs First set of Interrog Requests for Production and Requests for Admission: and this Notice of service : aty Brendon Taylor |
| 5/3/2010 | HRVC | AMYW | Hearing result for Motion to Compel held on 05/05/2010 01:30 PM: Hearing Vacated |
| 5/11/2010 | | CAMILLE | Motion in Limine; atyCharles JOhnson for plntfs |
| | NOTC | AMYW | Notice of Hearing on Plaintiffs' Motion in Limine; hrg set for 5/17 at 11:00 am; /s/ Charles Johnson, atty for plaintiffs |
| 5/14/2010 | MEMO | AMYW | Stipulated Joint Pre-trial Memorandum |
| 5/17/2010 | | CAMILLE | Motion in Limine; aty Brendon Taylor for Def. |
| | | CAMILLE | Defendants Response to Plaintiffs Motion in Limine; aty Brendon Taylor for def |
| | DCHH | AMYW | Hearing result for Pretrial Conference held on 05/17/2010 11:00 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Less than 100 pages. |
| 5/24/2010 | | AMYW | Plaintiffs' Objection to Defendant's Requested Jury Instructions; /s/ Charles Johnson, atty for Plaintiffs |

Mathew R. Bennett, Benjamin Lloyd Walton vs. Nancy Patrick

| Date | Code | User | Judge |
|-----------|------|---------|---|
| 5/24/2010 | RESP | AMYW | Response and Opposition to Defendant's Motion in Limine; /s/ Charles Johnson, atty for Plaintiffs |
| | | AMYW | Plaintiffs' Objection and Response to Defendant's Exhibits; /s/ Charles Johnson, atty for Plaintiffs |
| | ORDR | AMYW | Order Granting Motion in Limine as to Dr. Henry West; no mention how plaintiffs were referred to Dr. West at trial; /s/ J Nye, 5-24-10 |
| 5/26/2010 | | AMYW | Plaintiffs' Requested Jury Instructions; /s/ Charles Johnson, atty for Plaintiffs |
| | | AMYW | Plaintiffs' Proposed Voir Dire Questions; /s/ Charles Johnson, atty for Plaintiffs |
| | | AMYW | Defendant's Proposed Jury Instructions; /s/ Brendon Taylor, atty for Def |
| 6/1/2010 | | CAMILLE | Objection to Plaintiffs Jury Instructions; aty Brendon Taylor for Defendants |
| | | AMYW | Portneuf Medical Center's Ex Parte Motion to Shorten Time for Hearing on Portneuf Medical Center's Motion to Quash Subpoena and Motion for Proective Order; /s/ Jennifer Brizee, atty for PMC |
| | | AMYW | Defendant Portneuf Medical Center's Motion to Quash Plaintiff's Subpoena, and INTial Memorandum in Support Thereof; /s/ Jennifer Brizee, atty for PMC |
| 6/2/2010 | | CAMILLE | Notice of Hearing on Portneuf Medical Centers Motion to quash plntfs subpoena and Portneuf Medical Centers Motion for Protective Order; aty Jenmnifer Brizee for Portneuf |
| | DCHH | AMYW | Hearing result for Jury Trial held on 06/02/2010 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Over 500 pages. |
| | JTST | CINDYBF | Jury Trial Started |
| 6/3/2010 | | CAMILLE | Portneuf Medical Centers Motion for Protective Order and Memorandum in support; aty Jennifer Brizee for Portneuf Med |
| | | CAMILLE | Affidavit of Jennifer K Brizee; aty Jennifer Brizee for Portneuf Med |
| | AFFD | AMYW | Affidavit of Brendon Taylor; /s/ Brendon Taylor, atty for Def |
| 6/4/2010 | SUBR | DCANO | Subpoena Returned; Joann Hayward, Holly Parkinson or Stephanie Evans; Charles Johnson, Atty for Plntfs. |
| | | AMYW | Special Verdict |

Mathew R. Bennett, Benjamin Lloyd Walton vs. Nancy Patrick

| Date | Code | User | Judge |
|-----------|------|---------|--|
| 6/7/2010 | MEOR | AMYW | Minute Entry and Order; parties appeared for trial on 6/2/10, jury selected, witnesses testified, special verdict form the jury answered No to Questions 1 & 2; /s/ J Nye, 6-7-10 |
| | JDMT | AMYW | Judgment on Verdict; judgment in favor of Plaintiff Matthew Bennett in amount of \$3978.47 and Benjamin Walton in the amount of \$10,030.92; /s/ J Nye, 6-7-10 |
| | | AMYW | Pre-Empty Challenges for Qualification to Hear Jury Trial |
| | | AMYW | Jurors Selected for Voir Dire Questioning and Pre-Empty Challenges for Qualification to Hear Jury Trial |
| | | AMYW | Jurors Selected for Trial |
| 6/18/2010 | EXLT | AMYW | Exhibit List |
| | | CAMILLE | Motion to Alter and Amend Judgment and for Additur; and Motion for Pre Judgment Interest; aty C/Johnson for plntf |
| | | CAMILLE | Motion for Costs and Attorneys fees of the Prevailing Party on Jury Verdict and Judgment on the Verdict; aty C/Johnson for plntf |
| | MEMO | AMYW | Memorandum of Costs and Affidavit of Charles Johnson in Support of Motion for Costs and Fees; /s/ Charles Johnson, atty for Plaintiffs |
| | MEMO | AMYW | Memorandum & Brief in Support of Motion for Costs and Attorney's Fees to Plaintiffs Bennett & Walton; /s/ Charles Johnson, atty for Plaintiffs |
| 6/21/2010 | | CAMILLE | Defendant's Motion for Costs; aty Brendon Taylor for Def. |
| | | CAMILLE | Defendants Memorandum for Costs; aty Brendon Taylor for Def. |
| | | CAMILLE | Defendants Motion for Reduction to Judgment; aty Brendon Taylor for def |
| | | CAMILLE | Affidavit of Brendon C. Taylor; aty Brendon Taylor for Def. |
| 6/24/2010 | | CAMILLE | Notice of hearing on Plaintiffs Motion for Costs and Attorneys Fees of the Prevailing party on the Jury Verdict and Judgment on the Verdict; and Motion to Amend Judgment and for additur; and motion for pre judgment interest; aty Charles Johnson for plntf |
| | HRSC | AMYW | Hearing Scheduled (Motion 07/26/2010 09:30 AM) |
| 7/6/2010 | | CAMILLE | Plaintiffs Opposition to Defendants Motion for Reduction to Judgment; aty Charles Johnson for plntf |
| | | CAMILLE | Plaintiffs Objection to Defendants Motinfor Costs; aty Charles Johnson |

Mathew R. Bennett, Benjamin Lloyd Walton vs. Nancy Patrick

| Date | Code | User | Judge |
|-----------|------|---------|--|
| 7/7/2010 | | CAMILLE | Defendants Objection to Plaintiffs Post Trial Motions for Additur, interest, costs and attorneys fees; aty Brendon Taylor for def |
| 7/21/2010 | | CAMILLE | Plaintiffs Objection and REsponse to Defs Objection to Plntfs Post Trial Motions for Additur, Interest Costs and Attorneys Fees; aty Charles Johnson |
| 7/22/2010 | | AMYW | Supplement to Defendant's Post-Trial Motions and Responsive Pleadings; /s/ Brendon Taylor, atty for Def |
| | AFFD | AMYW | Affidavit in Support of Post-Trial Supplement; /s/ Brendon Taylor, atty for Def |
| 7/26/2010 | DCHH | AMYW | Hearing result for Motion held on 07/26/2010 09:30 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Less than 100 pages. |
| | | AMYW | Plaintiffs' Objection to Supplement to Defendant's Post-Trial Motions and Responsive Pleadings; /s/ Charles Johnson, atty for Plaintiffs |
| | | AMYW | Plaintiffs' Supplemental Objection to Defendant's Motion for Costs; /s/ Charles Johnson, atty for Plaintiffs |
| 7/30/2010 | | CAMILLE | Supplemental Authority on Attorneys Fees; aty Charles Johnson |
| | | AMYW | Defendant's Post-Hearing Brief; /s/ Brendon Taylor, atty for Defendant |
| | AFFD | AMYW | Affidavit Brendon Taylor Regarding Bankruptcy Order and Stipulation; /s/ Brendon Taylor, atty for Def |
| 8/5/2010 | | CAMILLE | Response and Objection to Defs Post-Hearing Brief and Affidavit on Bankruptcy Stipulation; aty Charles Johnson |
| 8/25/2010 | JDMT | AMYW | Amended Judgment on Verdict; amended to reflect Matthew Bennett received verdict in the amount of \$5,065.11, which includes costs in the matter of \$728.49, Ben Walton verdict in the amount of \$10,671.63, which includes costs in the amount of \$789.70, no attorney fees award to either party; /s/ J Nye, 8-25-10 |
| | | AMYW | Decision on Post-Judgment Motions; Motion for Additur is DENIED, pre-judgment interest awarded to each plaintiff, Walton \$851.01, Bennett \$530.15, Motion for Remittitur is GRANTED, Walton's verdict is reduced by \$1,000 and Bennett's verdict is reduced by \$172, Plaintiff Bennett and Walton are the prevailing parties against Patrick, Motion for Costs is GRANTED in part and DENIED in part, Attorney fees are not awarded to any party, amended judgment entered; /s/ J Nye, 8-25-10 |

Mathew R. Bennett, Benjamin Lloyd Walton vs. Nancy Patrick

| Date | Code | User | Judge |
|------------|------|---------|--|
| 9/7/2010 | | CAMILLE | Motion for relief and reconsideration of decision on Post Judgment Motions Denying Attys Fees; aty Charles Johnson for plntf |
| | | CAMILLE | Motion to Amend Complaint to Conform to Evidence: aty Charles Johnson for plntf |
| | HRSC | AMYW | Hearing Scheduled (Motion 09/27/2010 09:30 AM) |
| | NOTC | AMYW | Notice of Hearing on Plaintiffs' Motion to Amend and Motion for Relief; hrg set for 9/27/10 at 9:30 am; /s/ Charles Johnson, atty for Plaintiffs |
| 9/20/2010 | | CAMILLE | Defendants Objection and Brief in Opposition to Plntfs Motion for relief and reconsideration of Post Judgment Motions denying attys fees and plntfs Motion to Amend Complaint to Conform to evidence under IRCP 15b: aty Brendon Taylor for def |
| 9/24/2010 | | AMYW | Plaintiffs' Response to Defendant's Objection to Costs and Attorney's Fees and Supplementation of the Record; /s/ Charles Johnson, atty for Plaintiffs |
| 9/27/2010 | DCHH | AMYW | Hearing result for Motion held on 09/27/2010 09:30 AM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Court Reporter |
| 9/28/2010 | | CAMILLE | Minute Entry and Order; Motion to Amend to Conform to Evidence was filed timely but is DENIED, the Motion for Relief and Reconsideration of Decision on Post Judgment Motions Denying Attorney Fees is also DENIED: s/ Judge Nye 9-28-2010 |
| | CSTS | CAMILLE | Case Status Changed: Closed |
| 10/4/2010 | | NOELIA | Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Johnson, L Charles (attorney for Bennett, Mathew R.) Receipt number: 0034561 Dated: 10/5/2010 Amount: \$101.00 (Check) For: Patrick, Nancy (defendant) |
| | APSC | DCANO | Appealed To The Supreme Court |
| | NOTC | DCANO | NOTICE OF APPEAL; Charles Johnson, Atty for Plnfts/Appellants |
| 10/6/2010 | MISC | DCANO | CLERK'S CERTIFICATE OF APPEAL; Signed and Mailed to SC on 10-6-10. |
| 10/15/2010 | MISC | DCANO | IDAHO SUPREME COURT; Notice of Appeal received in SC on 10-12-10. Docket Number 38138-2010. Clerk's Record and Reporter's Transcripts Due in SC on 1-12-11. (12-8-10 5 weeks prior). The following Transcripts shall be lodged: Jury Trial 6-2-10 thur 6-7-10 and Motion Hearing held 7-26-10. |

Date: 1/4/2011

Sixth Judicial District Court - Bannock County

User: DCANO

Time: 10:07 AM

ROA Report

Page 9 of 9

Case: CV-2008-0004528-PI Current Judge: David C Nye

Mathew R. Bennett, etal. vs. Nancy Patrick

Mathew R. Bennett, Benjamin Lloyd Walton vs. Nancy Patrick

| Date | Code | User | Judge |
|------------|------|---------|---|
| 10/15/2010 | MISC | DCANO | IDAHO SUPREME COURT; Clerk's Certificate Recieved in SC on 10-12-10. David C Nye |
| 10/28/2010 | STJD | CAMILLE | Satisfaction Of Judgment David C Nye |
| 10/29/2010 | STIP | DCANO | Stipulation Notice of Request for Additional Records and Transcripts; Brendon C. Taylor, Atty for Dfdt. David C Nye |
| 12/7/2010 | MISC | DCANO | REPORTER'S TRANSCRIPT received in Court Records from Stephanie Morse for t he following hearings: Jury Trial held 6-2-10, Motion held 7-26-10 and Motions held 9-27-10. David C Nye |
| 1/4/2011 | MISC | DCANO | CLERK'S RECORD RECEIVED IN court records on 1-4-11. David C Nye |

2010 JUN -4 PM 4: 03

BY AW
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

MATHEW R. BENNETT and BENJAMIN
L. WALTON,

Plaintiffs,

vs.

NANCY PATRICK,

Defendant.

Case No: CV-2008-0004528-PI

SPECIAL VERDICT

We, the Jury, answer the special interrogatories as follows:

Question No. 1: What is the total amount of damage sustained by the plaintiff
Mathew Bennett as a result of defendant Nancy Patrick's negligence?

Answer to Question No. 1: We assess Mathew Bennett's damages as follows:

Stipulated past medical expenses: \$ 1,878.47

Other medical expenses

\$ 2

U *

Past lost earnings:

\$ 600.00

U

Non-economic damages:

\$ 1,500.00

U

* UNANIMOUS

Question No. 2: What is the total amount of damage sustained by the plaintiff

Benjamin Walton as a result of defendant Nancy Patrick's negligence?

Answer to Question No. 2: We assess Benjamin Walton's damages as follows:

Stipulated past medical expenses: \$ 3,030.92

Other medical expenses \$ 2,000 U

Past lost earnings: \$ 0 U

Non-economic damages: \$ 5,000 9 in Agreement
3 Not in Agreement

Dated this 4 day of June, 2010.

[Signature]
Presiding Juror
Richard Ellis

Sharon McHall

[Signature]

King O'Connor

Anna Guillett

[Signature]
Lamera O'Connor

Bridget George

2010 JUN -7 AM 10:36

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

MATHEW R. BENNETT and BENJAMIN
L. WALTON,

Plaintiffs,

vs.

NANCY PATRICK,

Defendant.

Case No: CV-2008-0004528-PI

MINUTE ENTRY & ORDER

The above-entitled matter came before this Court on the 2nd day of June, 2010, for a Jury Trial. The Plaintiffs appeared by and through counsel, Charles Johnson. The Defendant appeared by and through counsel, Brendon Taylor. Court reporting done by Stephanie Morse.

At 9:00 a.m. the Court convened. The Court introduced the case, court personnel, and counsel to the prospective jury panel.

The deputy clerk was instructed to call the roll of the prospective jurors. The following TWENTY-THREE (23) people were selected prior to trial beginning:

Case No.: CV-2008-0004528-PI
MINUTE ENTRY & ORDER
Page 1 of 9

1. Verena Simmons
2. Katiemarie Ashby
3. Heather Dunn
4. Susan Sandridge
5. Luanne Simmons
6. Mariah White
7. Amy Brown
8. Alyssa Mitchell
9. Jeffery Swann
10. Bridget George
11. Michael Hawkes
12. Kory Olaveson

13. Kasey Koyle
14. Angela Narramore
15. Dana May
16. Mary Rotunno-Koch
17. Richard Ellis
18. Andrue Morris
19. Laura Guillette
20. Jenny Ames
21. Harald Wyndham
22. Sharon Hall
23. Michele Cundick

The Court first questioned the panel. During questioning, Katiemarie Ashby was excused for cause and Mary Nielsen was called to fill the seat. Mary Nielsen was excused for cause and David Fielder was called to fill the seat. David Fielder was excused for cause and Ian Trulson was called to fill the seat. Michael Hawkes was excused for cause and David Wren was called to fill the seat. Amy Brown was excused for cause and Karl Heiner was called to fill the seat. Heather Dunn was excused for cause and Nalani Hunt was called to fill the seat. Alyssa Mitchell was excused for cause and Tamera Davenport.

The Court then passed the panel to the Plaintiff's attorney, Charles Johnson, to examine them on voir dire. Mr. Johnson passed the panel for cause.

Brendon Taylor, attorney for Defendant, questioned the panel for cause. During questioning David Wren was excused for cause and Raylin Ludwig was called to fill the seat. Raylin Ludwig was excused for cause and Addison Thomsen was called to fill the

seat. Verena Simmons was excused for cause and Camille Bytendorp was called to fill the seat. Mariah White was excused for cause and Tamara Emfield was called to fill the seat. Mr. Taylor then passed the panel for cause.

Mr. Johnson did a follow-up examination on voir dire and then passed the panel for cause.

Counsel exercised their preemptory challenges. The following jurors were called to try this matter and administered an oath:

- | | |
|----------------------|--------------------|
| 1. Camille Bytendorp | 8. Jeffery Swann |
| 2. Mary Rotunno-Koch | 9. Bridget George |
| 3. Richard Ellis | 10. Kory Olaveson |
| 4. Andrue Morris | 11. Jenny Ames |
| 5. Laura Guillette | 12. Harald Wyndham |
| 6. Tamara Emfield | 13. Sharon Hall |
| 7. Tamera Davenport | |

The Court took the morning recess at 10:12 a.m.

The Court reconvened with the jury present at 10:35 a.m. Jury instructions 1 through 10 were read.

Mr. Johnson presented his opening statement. Mr. Taylor presented his opening statement.

Mr. Johnson called the Plaintiffs' first witness, Kelly Bennett, who was administered an oath and testified. Mr. Johnson conducted direct examination. Mr. Taylor conducted cross examination and the witness was excused.

The jury was excused at 11:39 a.m. to hear an oral motion outside the presence of

the jury. The Court heard oral argument on the Mr. Johnson's oral motion for a mistrial. The Court ruled that it would give a curative instruction to the jury regarding workers' compensation.

The jury was escorted back in at 11:46 a.m. Mr. Johnson called the Plaintiffs' next witness, Benjamin Walton, who was administered an oath and testified. Mr. Johnson conducted direct examination.

The Court excused the jury for the lunch break at 12:05 p.m.

The Court reconvened with the jury present at 1:16 p.m. Mr. Johnson continued direct examination of the witness.

The Court excused the jury at 1:29 p.m. to hear an objection outside their presence. The Court then reconvened at 1:32 p.m. and Mr. Johnson continued direct examination of the witness.

The Court excused the jury at 1:43 p.m. to hear an objection outside their presence. The Court then reconvened at 1:46 p.m. and Mr. Johnson continued direct examination of the witness. Mr. Taylor conducted cross examination of the witness. The jury was excused at 2:01 p.m. to hear an objection outside their presence. The Court reconvened at 2:06 p.m. and Mr. Taylor continued cross examination of the witness. Mr. Johnson conducted redirect examination. Exhibits 152 and 153 were offered. The jury was excused at 2:15 p.m. to hear an objection outside their presence. The jury was escorted back in at 2:20 p.m. Exhibit 152 was admitted. Mr. Johnson continued redirect

examination of the witness. The jury was again excused at 2:22 p.m. to hear an objection outside their presence. The jury was escorted back in at 2:35 p.m. Mr. Johnson continued redirect examination. Mr. Taylor conducted re-cross examination. Mr. Johnson conducted redirect examination and the witness was excused.

Mr. Johnson called the Plaintiffs' next witness, Matthew Bennett, who was administered an oath and testified. Mr. Johnson conducted direct examination of the witness.

The Court took the afternoon recess at 3:22 p.m.

The Court reconvened after the afternoon break at 3:43 p.m. Mr. Bennett was excused to allow a witness to be called out of order.

Mr. Johnson called the Plaintiffs' next witness, Ronald Rutten, who was administered an oath and testified. Mr. Johnson conducted direct examination of the witness. The jury was excused at 3:57 to hear an objection outside their presence. The jury was escorted back in at 4:03 p.m. Mr. Johnson continued direct examination. Exhibit 41 was offered and admitted. Mr. Taylor conducted cross examination and the witness was excused.

Mr. Johnson recalled the Plaintiffs' witness, Matthew Bennett, to continue direct examination. Exhibit 150 was offered and admitted. Mr. Taylor conducted cross examination. Mr. Johnson conducted redirect examination. Mr. Taylor conducted re-cross examination and the witness was excused.

The Court adjourned for the day at 4:52 p.m.

The jury was excused at 4:33 p.m. The Court heard a matter outside the presence of the jury in chambers and the Court adjourned for the day at 4:51 p.m.

The Court reconvened on June 3, 2010 at the hour of 8:59 a.m. Mr. Johnson called the Plaintiff's next witness, Dr. Henry West, who was administered an oath and testified. Mr. Johnson conducted direct examination. Exhibit 125 was offered and denied. Exhibit 120 was offered and admitted. The jury was excused at 9:40 a.m. to hear an objection outside their presence. The jury was escorted in at 9:51 a.m. The court took the morning recess at 10:09 a.m. The Court reconvened at 10:26 a.m. with the jury present. Mr. Johnson continued direct examination of the witness. Exhibit 65 was offered and admitted. Mr. Taylor conducted cross examination and the witness was excused. The jury was excused at 10:59 a.m. to hear a brief objection outside their presence. The jury was escorted back in at 11:06 a.m.

Mr. Johnson called the Plaintiffs' next witness, Devin Walton, who was administered an oath and testified. Mr. Johnson conducted direct examination. Exhibit 134 was offered. The jury was excused at 11:13 a.m. Exhibit 134 was withdrawn. The jury was escorted back into the courtroom at 11:17 a.m. Mr. Johnson continued direct examination and the witness was excused.

The Court adjourned for the lunch break at 11:20 a.m.

The Court reconvened with the jury present at 1:04 p.m. Mr. Johnson called the

Plaintiffs' next witness, Dr. David Simon, who was administered an oath and testified. Mr. Johnson conducted direct examination. The jury was excused at 1:40 p.m. to hear an objection outside the presence of the jury. The jury was escorted in at 1:58 and Mr. Johnson continued direct examination. Exhibit 148 was offered and denied. Mr. Taylor conducted cross examination. Exhibit 146 was offered and admitted and the witness was then excused.

The Court took the afternoon break at 3:00 p.m. The Court reconvened with the jury present at 3:13 p.m. The Plaintiff rested their case.

Mr. Taylor called the Defendant's first witness, Nancy Patrick, who was administered an oath and testified. Mr. Taylor conducted direct examination. Mr. Johnson conducted cross examination and the witness was excused. The Defendant then rested for the day.

Court adjourned for the day at 3:20 p.m.

The Court reconvened without the jury present on June 4, 2010 at 10:15 a.m. to hear objections regarding exhibits. The jury was escorted in at 10:19 a.m. The Court read jury instruction numbers 11-. Each counsel gave closing arguments. The Clerk administered the oath to the Court Marshall, and the jury retired for deliberation at 12:04 p.m.

At 3:55 p.m., before the jury was escorted in, Mr. Johnson made an objection on the record. The jury was then escorted into the room at 3:56 p.m. and counsel waived roll

call of the jury. The Court asked the presiding juror if they had in fact reached a verdict. Presiding juror, Harald Wyndham, acknowledged that they had reached a verdict.

The Court asked the deputy clerk to read the verdict in open Court and the same was done at 3:56 p.m. The jury answered No on Question No. 1 and Question No. 2 on the Special Verdict Form. The Court then asked counsel if they would like the jury polled. Counsel declined to have the jury polled. The Court was in recess at 4:01 p.m.

DATED this 7th day of June, 2010.

A handwritten signature in black ink, appearing to read 'David C. Nye', is written over a horizontal line.

DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

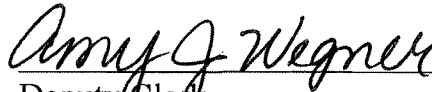
I HEREBY CERTIFY that on the 7th day of June, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Charles Johnson
Johnson Olson Chartered
P.O. Box 1725
Pocatello, Idaho 83204-1725

☒ U.S. Mail
☐ Overnight Delivery
☐ Hand Deliver
☐ Fax: 232-9161

Brendon C. Taylor
Merrill & Merrill, Chartered
P.O. Box 991
Pocatello, Idaho 83204-0991

☒ U.S. Mail
☐ Overnight Delivery
☐ Hand Deliver
☐ Fax: 232-2499


Deputy Clerk

CLERK OF THE COURT
2010 JUN -7 AM 10:36

BY 
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

MATHEW R. BENNETT and BENJAMIN
L. WALTON,

Plaintiffs,

vs.

NANCY PATRICK,

Defendant.

Case No: CV-2008-0004528-PI

JUDGMENT ON VERDICT

This cause came on regularly for trial on June 2 through June 4, 2010. The parties appeared by and through their attorneys. Charles Johnson represented both Plaintiffs. Brendon Taylor represented Defendant. A Jury of twelve (12) persons was regularly impaneled and sworn to try said cause. Witnesses on the part of plaintiff and defendant were sworn and examined. After hearing evidence, the arguments of counsel and instructions of the Court, the Jury retired to consider their verdict. The Jury subsequently returned a verdict awarding monetary damages to each Plaintiff. *See the Special Verdict,*

filed on June 4, 2010.


WHEREFORE, by virtue of the law and by reason of the premises aforesaid,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered in this matter in favor of Plaintiff **Mathew R. Bennett** and against Defendant Nancy Patrick in the TOTAL AMOUNT of \$3,978.47.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered in this matter in favor of Plaintiff **Benjamin L. Walton** and against Defendant Nancy Patrick in the TOTAL AMOUNT of \$10,030.92.

Costs and fees, if any, to be determined at a later date pursuant to Idaho statutes and IRCP 54.

DATED this 2nd day of June, 2010.


DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

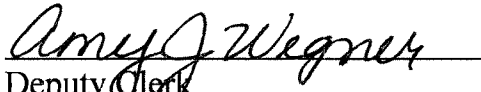
I HEREBY CERTIFY that on the 7th day of June, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Charles Johnson
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☐ Fax: 232-9161

Brendon C. Taylor
Merrill & Merrill, Chartered
P.O. Box 991
Pocatello, Idaho 83204-0991

☒ U.S. Mail
☐ Overnight Delivery
☐ Hand Deliver
☐ Fax: 232-2499


Deputy Clerk

2010 JUN -7 AM 10:44
BY AW
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Matthew R. Bennett and Benjamin L. Walton,

represented by, Charles Johnson

Plaintiffs,

vs.

Nancy Patrick,

represented by, Brendon Taylor

Defendant.

Case No: CV-2008-0004528-PI

Date: Wednesday, June 2, 2010

**PRE-EMPTORY CHALLENGES FOR
QUALIFICATION TO HEAR JURY TRIAL**

PLAINTIFF'S PRE-EMPTORY

**Noted by
Defendant**

DEFENDANT'S PRE-EMPTORY

**Noted by
Plaintiff**

1. Ian Troulson #2

1. Karl Heuer #7

2. Susan Sandridge #4

2. Kasey Kayle #13

3. Deron May #15

3. Addison Thompson #11

4. Angela Norenwood #14

4. Luanne Simmons #5

5. Pass

5. Nalani Hunt #3

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Matthew R. Bennett and Benjamin L. Walton,
represented by, Charles Johnson

Plaintiffs,

vs.

Nancy Patrick,
represented by, Brendon Taylor

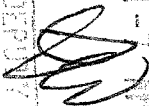
Defendant.

Case No: CV-2008-0004528-PI

Date: Wednesday, June 2, 2010

**JURORS SELECTED FOR VOIR DIRE QUESTIONING AND PRE-
EMPTORY CHALLENGES FOR QUALIFICATION
TO HEAR JURY TRIAL**

| | | | | | | |
|---|---|--|--|------------------------|--|---|
| 1. Verena Simmons Camille Bytendap | 2. Katiemane Ashby Mary Nielsen David Fielder Ian Trulson | 3. Heather Dunn Nalani Hunt | 4. Susan Sandridge | 5. Luanne Simmons | 6. Alannah White Tamara Enfield | 7. Amy Brown Karl Heiner |
| 8. Alyssa Mitchell Tamara Davenport | 9. Jeffery Swann | 10. Bridget George | 11. Michael Hawker David When Raylin Ludwig Addison Thomson | 12. Kory Olaveson | 13. Kasey Koyle | 14. Angela Narramore |
| 15. Dana May | 16. Mary Rotunno Koch | 17. Richard Ellis | 18. Andru e Morris | 19. Laura Guillette | | |
| 20. Jenny Ames | 21. Harald Wyndham | 22. Sharon Hall | 23. Michele Cundick | | | |

BY 
DEPUTY CLERK

2010 JUN -7 AM 10:44

CLERK OF DISTRICT COURT

CLERK OF DISTRICT COURT

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Matthew R. Bennett and Benjamin L. Walton,
represented by, Charles Johnson

Plaintiffs,

vs.

Nancy Patrick,
represented by, Brendon Taylor

Defendant.

Case No: CV-2008-0004528-PI

2010 JUN -7 PM 10:44

Date: Wednesday, June 2, 2010

DEPUTY CLERK

JURORS SELECTED FOR TRIAL

| | | | | | | |
|-------------------------|------------------------|----------------------|----------------------|-----------------------|-----------------------|---------------|
| 1. Camille Bykendorp | 2. Mary Rotunno-Kah | 3. Richard Ellis | 4. Andrue Morris | 5. Laura Guillelte | 6. Tamara Emfield | |
| 7. Tamera Davenport | 8. Jeffery Swann | 9. Bridget George | 10. Kory Olaveson | 11. Jenny Ames | 12. Harald Wyndham | 13. Sharon |

Bennott v. Patrick, June 2, 2010 Post Evidence Jury Instructions

| Plaintiff's Proposed | Defendant's Proposed | Court Used |
|-----------------------------|-----------------------------|-------------------|
| 1.11 | 1.11 | YES |
| 1.20.1 | 1.20.1 | YES |
| | 1.17 | YES |
| | 1.15.2 | YES |
| 1.24.2 | 1.24.2 | YES |
| | 1.43.1 | YES |
| 2.30.2 | | YES |
| | 2.30.1 | NO |
| | 2.00.3 | YES |
| | 2.20 | YES |
| 9.00 MODIFIED | | NO |
| | 9.00 | YES |
| 9.01 | | YES |
| | 9.01 MODIFIED | NO |
| 9.02 | 9.02 | YES |
| 9.12B | | YES |
| 9.13 | | YES |
| | 9.14 | YES |
| 9.15 Modified | | YES IDJI |
| 1.13 | | YES |
| | Moeller v. Harshbarger | NO |
| 1.15.1 | | NO |
| 1.40.1 | | NO |
| | 1.40.2 | YES |

PLAINTIFFS' REQUESTED JURY INSTRUCTION NO. 24

WORKER'S COMPENSATION IRRELEVANT

Whether a party has workers compensation coverage or insurance is not relevant to any of the questions you are to decide. You must avoid any inference, speculation or discussion about worker's compensation matters.

AUTHORITY

IDJI 2d 1.06 modified.; Lehmkuhl v. Bolland, 114 Idaho 503, 757 P.2d 1222 (Ct. App. 1988).

Given _____
Refused X
Modified _____
Other _____
DATED this _____ day of June 2010.

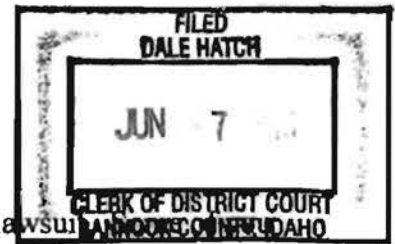
District Judge David C. Nye

Comment:

JURY INSTRUCTION NO. ____

Whether a party has workers compensation coverage or insurance is not relevant to any of the questions you are to decide. You must avoid any inference, speculation or discussion about worker's compensation matters.

INSTRUCTION NO. 1



Ladies and gentlemen, we are about to begin the trial of this lawsuit. You may be unfamiliar with the procedures in which you are about to participate; and I am going, therefore, to outline briefly for you how this trial will proceed. Now that you have been selected and sworn, I will read to you some of your instructions. Then Plaintiffs' counsel will make his opening statement after which the Defense counsel may make his opening statement; or he may save his opening statement until later. The opening statement is intended to inform you about the party's case, what the claims are, and what evidence is to be produced to you. However, neither of the opening statements are evidence.

Then each side offers evidence to support their claims. The Plaintiffs proceed first and offers all the evidence on their claims. Afterwards, the Defendant proceeds to offer all the evidence on her claim or defense. Thereafter, rebuttal evidence may be offered.

After all of the evidence is in, I will read to you the rest of your jury instructions. In those instructions, I will tell you what the law is and will tell you what you will have to decide.

Then, the trial concludes with the closing arguments of both sides. Just as the opening statements are not evidence, neither are the closing arguments. During the closing arguments, the attorneys will summarize the evidence to help you understand how it relates to the law.

Finally, you will be taken to the jury room where you can deliberate on your verdict in privacy.

INSTRUCTION NO. 2

These instructions explain your duties as jurors and define the law that applies to this case. It is your duty to determine the facts, to apply the law set forth in these instructions to those facts, and in this way to decide the case. Your decision should be based upon a rational and objective assessment of the evidence. It should not be based on sympathy or prejudice.

It is my duty to instruct you on the points of law necessary to decide the case, and it is your duty to follow the law as I instruct. You must consider these instructions as a whole, not picking out one and disregarding others. The order in which these instructions are given or the manner in which they are numbered has no significance as to the importance of any of them. If you do not understand an instruction, you may send a note to me through the bailiff, and I will try to clarify or explain the point further.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits admitted into evidence, and any undisputed or admitted facts. While the arguments and remarks of the attorneys may help you understand the evidence and apply the instructions, what they say is not evidence. If an attorney's argument or remark has no basis in the evidence, you should disregard it.

The production of evidence in court is governed by rule of law. At times during the trial, I may sustain an objection to a question without permitting the witness to answer it, or to an offered exhibit without receiving it into evidence. My rulings are legal matters, and are solely my responsibility. You must not speculate as to the reason for any objection, which is made, or my ruling thereon, and in reaching your decision you may not consider such a question or exhibit or speculate as to what the answer or exhibit would have shown. Remember, a question is not evidence and should be considered only as it gives meaning to the answer.

There are occasions where an objection is made after an answer was given or the remark is made, and in my ruling on the objection I will instruct that the answer or remark be stricken, or direct that you disregard the answer or remark and dismiss it from your minds. In your deliberations, you must not consider such answer or remark, but must treat it as though you had never heard it.

The law does not require you to believe all of the evidence admitted in the course of the trial. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it. In so doing, you bring with you to this courtroom all of the experience and background of your lives. There is no magical formula for evaluating testimony. In your everyday affairs, you determine for yourselves whom you believe, what you believe and how much weight you attach to what you are told. The considerations you use in making the more important decisions in your everyday dealings are the same considerations you should apply in your deliberations in this case.

INSTRUCTION NO. 3

During your deliberations, you will be entitled to have with you my instructions concerning the law that applies to this case, the exhibits that have been admitted into evidence and any notes taken by you in the course of the trial proceedings.

If you take notes during the trial, be careful that your attention is not thereby diverted from the witness or his testimony; and you must keep your notes to yourself and not show them to other persons or jurors until the jury deliberations at the end of the trial. When you leave at night, leave your notes in the jury room. In addition, you cannot assign to one person the duty of taking notes for all of you.

INSTRUCTION NO. 4

There are certain things you must not do during this trial:

1. You must not associate in any way with the parties, any of the attorneys or their employees, or any of the witnesses.
2. You must not discuss the case with anyone, or permit anyone to discuss the case with you. If anyone attempts to discuss the case with you, or to influence your decision in the case, you must report it to me promptly.
3. You must not discuss the case with other jurors until you retire to the jury room to deliberate at the close of the entire case.
4. You must not make up your mind until you have heard all of the testimony and have received my instructions as to the law that applies to the case.
5. You must not contact anyone in an attempt to discuss or gain a greater understanding of the case.
6. You must not go to the place where any alleged event occurred.
7. You must leave any cell phones in the jury room while court is in session. You must not use your cell phone, hand held devices or any computer to research the issues or facts of this case.

INSTRUCTION NO. 5

The following facts are not in dispute:

1. The parties were involved in a motor vehicle accident on or about October 28, 2007, in Bannock County Idaho.
2. At the time of the accident, Plaintiff Benjamin Walton was the driver of a 1993 Toyota Tundra pickup and Plaintiff Mathew Bennett was his passenger. Defendant Nancy Patrick was the driver of a 1997 Buick Skylark.
3. Mr. Walton was driving eastbound on E. Center in Pocatello near the northbound off-ramp of I-15 at about 11:30 a.m.
4. The area was under construction and Ms. Patrick drove off of the interstate and through the construction zone and broadsided Mr. Walton's vehicle on the passenger side.
5. Ms. Patrick has admitted that the accident was her fault and the Court has ruled that Ms. Patrick is liable for the accident.
6. Benjamin Walton received medical care for a back and neck injury following the accident. His treatment for those injuries from the date of the accident through May of 2008 is not disputed.
7. Plaintiff Mathew Bennett received medical care for a lower back injury following the accident. He hurt his back further while at work in November of 2007. He received medical care through May of 2008.

INSTRUCTION NO. 6

Any statement by me identifying a claim of a party is not evidence in this case. I have advised you of the claims of the parties merely to acquaint you with the issues to be decided.

INSTRUCTION NO. 7

Whether a party has insurance is not relevant to any of the questions you are to decide.
You must avoid any inference, speculation or discussion about insurance.

INSTRUCTION NO. 8

If during the trial I say or do anything that suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it. The only exception to this is the instruction regarding what facts are not disputed.

INSTRUCTION NO. 9

In deciding this case, you may not delegate any of your decisions to another or decide any question by chance, such as by the flip of a coin or drawing of straws. If money damages are to be awarded or percentages of fault are to be assigned, you may not agree in advance to average the sum of each individual juror's estimate as the method of determining the amount of the damage award or percentage of negligence.

INSTRUCTION NO. 10

Members of the jury, I remind you that you are not to discuss this case among yourselves or with anyone else, nor to form any opinion as to the merits of the case, until after I finally submit the case to you.

INSTRUCTION NO. 11

Evidence may be either direct or circumstantial. Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves the fact, by proving one or more facts from which the fact at issue may be inferred.

The law makes no distinction between direct and circumstantial evidence as to the degree of proof required; each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

INSTRUCTION NO. 12

The plaintiffs have the burden of proof on each of the following propositions:

1. The defendant was negligent.
2. The plaintiff was injured.
3. The negligence of the defendant was a proximate cause of injury to the plaintiff.
4. The elements of damage and the amounts thereof proximately caused by the defendant's negligence.

You are instructed that propositions 1 – 3 have been admitted by the defendant and determined by the Court. Proposition 4 is the only proposition you must decide. In your consideration of all of the evidence, you must decide the elements of damages and the amounts thereof that have been proven by the plaintiffs.

INSTRUCTION NO. 13

When I say that a party has the burden of proof on a proposition, or use the expression “if you find” or “if you decide,” I mean you must be persuaded that the proposition is more probably true than not true.

INSTRUCTION NO. 14

When I use the expression “proximate cause,” I mean a cause that, in natural or probable sequence, produced the injury, the loss or the damage complained of. It need not be the only cause. It is sufficient if it is a substantial factor in bringing about the injury, loss or damage.

There may be one or more proximate causes of an injury. When the negligent conduct of two or more persons or entities contributes concurrently as substantial factors in bringing about an injury, the conduct of each may be a proximate cause of the injury regardless of the extent to which each contributes to the injury.

INSTRUCTION NO. 15

By giving you instructions on the subject of damages, I do not express any opinion as to whether the plaintiffs are entitled to damages beyond the stipulated amounts.

INSTRUCTION NO. 16

You are instructed that the plaintiffs are entitled to recover from the defendant. Therefore, the jury must determine the amount of money that will reasonably and fairly compensate the plaintiffs for any damages proved to be proximately caused by the defendant's negligence.

The elements of damage the jury may consider are:

A. Non-economic damages

1. The nature of the injuries;
2. The physical and mental pain and suffering, past and future;
3. The impairment of abilities to perform usual activities;

B. Economic damages

1. The reasonable value of necessary medical care received and expenses incurred as a result of the injury and the present cash value of medical care and expenses reasonably certain and necessary to be required in the future;
2. The reasonable value of the past earnings lost as a result of the injury;
3. Any other specific item based upon the evidence.

You are instructed that the parties have stipulated that Mathew Bennett is entitled to \$1,878.47 in medical care received and Benjamin Walton is entitled to \$3,030.92 in medical care received. Whether the plaintiffs have proved any additional amounts of medical care received or any of the other elements is for the jury to decide.

INSTRUCTION NO. 17

A person who has been damaged must exercise ordinary care to minimize the damage and prevent further damage. Any loss that results from a failure to exercise such care cannot be recovered.

INSTRUCTION NO. 19A

The alleged failure to use a seat belt is not a defense to liability or damages in Idaho. You must avoid any inference, speculation or discussion about the use or non-use of seatbelts. Any evidence of seatbelt use or non-use came in only for purposes of impeachment.

INSTRUCTION NO. 18

When I use the phrase “present cash value” as to any damage that may accrue in the future, I mean that sum of money determined and paid now which, when invested at a reasonable rate of interest, would be sufficient to pay the future damages at the time and in the amount the future damages will be incurred.

INSTRUCTION NO. 18A

Under a standard table of mortality, the life expectancy of a male of age 29(Mat Bennett) is 48 years and the expectancy of a male of age 32(Ben Walton) is 45 years. These figures are not conclusive. They are an actuarial estimate of the average probable remaining length of life based upon statistical samples of death rates and ages at death in this country. This data may be considered in connection with all other evidence relating to the probable life expectancy, including the subject's occupation, health, habits, and other activities.

INSTRUCTION NO. 19

Damages for lost earnings must be shown with reasonable certainty; compensatory awards cannot be based upon speculation and conjecture.

INSTRUCTION NO. 20

I have given you the rules of law that apply to this case. I have instructed you regarding matters that you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing arguments to you and then you will retire to the jury room for your deliberations.

Each of you has an equally important voice in the jury deliberations. Therefore, the attitude and conduct of jurors at the beginning of the deliberations are important. At the outset of deliberations, it is rarely productive for a juror to make an emphatic expression of opinion on the case or to state how he or she intends to vote. When one does that at the beginning, one's sense of pride may be aroused and there may be reluctance to change that position, even if shown that it is wrong. Remember that you are not partisans or advocates, but you are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

Consult with one another. Consider each other's views. Deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

INSTRUCTION NO. 21

In this case, you will be given a special verdict form to use in returning your verdict. This form consists of a series of questions that you are to answer. I will read the verdict form to you now. It begins:

We, the Jury, answer the special interrogatories as follows:

Question No. 1: What is the total amount of damage sustained by the plaintiff Mathew Bennett as a result of defendant Nancy Patrick's negligence?

Answer to Question No. 1: We assess Mathew Bennett's damages as follows:

| | |
|-----------------------------------|-------------|
| Stipulated past medical expenses: | \$ 1,878.47 |
| Other medical expenses | \$ _____ |
| Past lost earnings: | \$ _____ |
| Non-economic damages: | \$ _____ |

You are to fill in the blanks with the amount of damages, if any, that you find has been proven by the plaintiff Mathew Bennett to have been proximately caused by defendant Nancy Patrick's negligence. If you find that Mr. Bennett has failed to prove a particular type of damage then write a zero on that line; otherwise, write in the amount of damage you find Mr. Bennett has proven.

Question No. 2: What is the total amount of damage sustained by the plaintiff Benjamin Walton as a result of defendant Nancy Patrick's negligence?

Answer to Question No. 2: We assess Benjamin Walton's damages as follows:

| | |
|-----------------------------------|-------------|
| Stipulated past medical expenses: | \$ 3,030.92 |
| Other medical expenses | \$ _____ |

Past lost earnings: \$ _____

Non-economic damages: \$ _____

You are to fill in the blanks with the amount of damages, if any, that you find has been proven by the plaintiff Benjamin Walton to have been proximately caused by defendant Nancy Patrick's negligence. If you find that Mr. Bennett has failed to prove a particular type of damage then write a zero on that line; otherwise, write in the amount of damage you find Mr. Bennett has proven.

There are signature lines at the bottom of the special verdict. When you have completed your deliberations, you are to sign the verdict as instructed in another instruction.

INSTRUCTION NO. 22

On retiring to the jury room, select one of your number as a foreman, who will preside over your deliberations.

An appropriate form of verdict will be submitted to you with any instructions. Follow the directions on the verdict form, and answer all of the questions required of you by the instructions on the verdict form.

A verdict may be reached by three-fourths of your number, or nine of you. As soon as nine or more of you shall have agreed upon each of the required questions in the verdict, you should fill it out as instructed, and have it signed. It is not necessary that the same nine agree on each question. If your verdict is unanimous, your foreman alone will sign it; but if nine or more, but less than the entire jury, agree, then those so agreeing will sign the verdict.

As soon as you have completed and signed the verdicts, you will notify the court marshal, who will then return you into open court.

INSTRUCTION NO. 23

If it becomes necessary during your deliberations to communicate with me, you may send a note signed by one or more of you to the court marshal. You should not try to communicate with me by any means other than such a note.

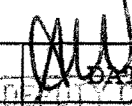
During your deliberations, you are not to reveal to anyone how the jury stands on any of the questions before you, numerically or otherwise, unless requested to do so by me.

INSTRUCTION NO. 24

You have now completed your duties as jurors in this case and are discharged with the sincere thanks of this Court. You may now discuss this case with the attorneys or with anyone else. For your guidance, I instruct you that whether you talk to the attorneys, or to anyone else, is entirely your own decision. It is proper for you to discuss this case, if you want to, but you are not required to do so, and you may choose not to discuss the case with anyone at all. If you choose to talk to someone about this case, you may tell them as much or as little as you like about your deliberations or the facts that influenced your decisions. If anyone persists in discussing the case over your objection, or becomes critical of your service, either before or after any discussion has begun, you may report it to me.

MATHEW R. BENNETT AND BENJAMIN L. WALTON
EXHIBIT INDEX LIST

2010 JUN -7 AM 10:44

| EXHIBIT | DESCRIPTION | BY  DATE | ADMITTED |
|---|--|---|----------|
| 1 | Idaho Vehicle Collision Report (four pages) | 10/18/07 | |
| 2 | ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY | 01/05/10 | |
| 3-5 | RESERVED | | |
| MAT'S MEDICAL RECORDS | | | |
| PORTNEUF MEDICAL CENTER | | | |
| October 18, 2007 | | | |
| 6 | EMERGENCY SERVICES | 10/18/07 | Stip |
| 7 | CONSENT TO MEDICAL AND SURGICAL TREATMENT | 10/18/07 | Stip |
| 8 | Picis Charting (24 pages) | 10/18/07 | Stip |
| 9 | Picis Charting Summary (3 pages) | 10/18/07 | Stip |
| 10 | PORTNEUF MEDICAL CENTER DISCHARGE INSTRUCTIONS RECEIPT | 10/18/07 | Stip |
| 11 | PATIENT DETAIL STATEMENT | 10/18/07 | Stip |
| 12-20 | RESERVED | | |
| November 20, 2007 | | | |
| 21 | EMERGENCY SERVICES | 11/20/07 | Stip |
| 22 | CONSENT TO MEDICAL AND SURGICAL TREATMENT | 11/20/07 | Stip |
| 23 | RADIOLOGY REPORT (X-Ray Lumbar Spine, Two to Three Views Dr. Ellen Eng) | 11/20/07 | Stip |
| 24 | Picis Charting Summary (4 pages) | 11/20/07 | Stip |
| 25 | PORTNEUF MEDICAL CENTER DISCHARGE INSTRUCTIONS | 11/20/07 | Stip |
| 26 | PORTNEUF MEDICAL CENTER DISCHARGE INSTRUCTIONS RECEIPT | 11/20/07 | Stip |
| 27 | PATIENT DETAIL STATEMENT | 11/20/07 | Stip |
| 28-30 | RESERVED | | |
| Physical Therapy November 26, 2007 | | | |
| 31 | EMERGENCY SERVICES | 11/26/07 | Stip |
| 32 | CONSENT TO MEDICAL AND SURGICAL TREATMENT | 11/26/07 | Stip |
| 33 | Patient Medical History Questionnaire | 11/26/07 | Stip |
| 34 | Physical Therapy Initial Evaluation | 11/26/07 | Stip |

| | | | |
|-------------------------------|---|---------------------------------|---------------|
| 36 | Physical Medicine Progress Notes Physical Therapy | 11/26/07 through 12/13/07 | Stip |
| 37 | WEIGHT/REPETITIONS/TIME-LEFT/RIGHT | 12/06/07 through 12/13/07 | Stip |
| 38 | Outpatient Physical Therapy Report | 12/18/07 | Stip |
| 39 | PATIENT DETAIL STATEMENT | 11/26/07 and 11/27/07 | Stip |
| 40 | IDAHO AMENDED HOSPITAL LIEN | 12/21/07 | |
| 41 * | PATIENT DETAIL STATEMENT | 12/06/07 | Admitted 6/21 |
| 42-50 | RESERVED | | |
| MOUNTAIN VIEW FAMILY MEDICINE | | | |
| 51 | Chart Notes | 10/30/07 | Stip |
| 52 | Chart Notes | 11/30/07 | Stip |
| 53 | Doctor Note "Please excuse from work" | 11/27/07 | Stip |
| 54 | Letter from Dr. Evan Holmstead | 01/03/08 | Stip |
| 55 | Transaction History | 01/08/08 | Stip |
| 56 * | Letter from Dr. Evan Holmstead | 09/16/08 | Stip |
| 57 * | E. Evan Holmstead M.D. Curriculum Vitae | Undated | |
| 58-60 | RESERVED | | |
| WEST CHIROPRACTIC | | | |
| 61 | Automobile Accident Questionnaire | undated | Stip |
| 62 | Health Reports and Doctor's Lien | 04/16/08 | |
| 63 | Chart Note | 04/16/08 | Stip |
| 64 | Low Back Examination Form (four pages) | 04/16/08 | Stip |
| 65 | Letter from Dr. Henry West Re: Mathew Bennett | 05/27/08 | Admitted 6/31 |
| 66 | Patient Ledger History | 04/16/08 through 05/25/08 | Stip |
| 67 | Chart Notes (Exam Summary) | 04/16/08 | Stip |
| 68 * | Chart Notes | 05/24/08 through 02/08/10 | Stip |
| 69 * | UPDATED Patient Ledger History | 04/16/08 through 04/20/10 | Stip |
| 70 | RESERVED | | |

| | | | |
|--------------------------------|---|---------------------------------|------|
| SHOPKO PHARMACY | | | |
| 71 | Medical Expenses Summary | 10/18/07 through 04/21/08 | Stip |
| 72 | RESERVED | | |
| KIGGINS PAYROLL SUMMARY | | | |
| 73 | Kiggins Concrete & Construction Co. PAYROLL SUMMARY (comparable wages) (Redact Written Part?) | 10/30/07 through 02/01/08 | |
| 74 | Kiggins Concrete & Construction Co. PAYROLL TRANSACTION DETAIL | 10/30/07 through 02/01/08 | Stip |
| 75-80 | RESERVED | | |
| BEN'S MEDICAL RECORDS | | | |
| PORTNEUF MEDICAL CENTER | | | |
| 81 | Emergency Services | 10/18/07 | Stip |
| 82 | CONSENT TO MEDICAL AND SURGICAL TREATMENT | 10/18/07 | Stip |
| 83 | Picis Charting (24 pages) | 10/18/07 | Stip |
| 84 | Picis Charting Summary (3 pages) | 10/18/07 | Stip |
| 85 | PORTNEUF MEDICAL CENTER PRESCRIPTION | 10/18/07 | Stip |
| 86 | PORTNEUF MEDICAL CENTER DISCHARGE INSTRUCTIONS | 10/18/07 | Stip |
| 87 | PORTNEUF MEDICAL CENTER DISCHARGE INSTRUCTIONS RECEIPT | 10/18/08 | Stip |
| 88 | RADIOLOGY REPORT (X-Ray Cervical Spine, Four Views Dr. David M. Cameron) | 10/18/07 | Stip |
| 89 | RADIOLOGY REPORT (X-Ray Lumbar Spine, Three Views Dr. David M. Cameron) | 10/18/07 | Stip |
| 90 | Statement | 10/18/07 | Stip |
| 91 | RADIOLOGY PHYSICIANS OF IDAHO (XR Spine Lumbarsac 2-3 V) | 10/18/07 | Stip |
| 92-100 | RESERVED | | |
| FAMILY PRACTICE GROUP | | | |
| 101 | Progress Notes by Dr. Richard Maynard | 10/26/07 | Stip |
| 102 | Progress Notes by Dr. Richard Maynard | 11/09/07 | Stip |
| 103 | Letter from Dr. Richard Maynard | 01/21/08 | Stip |
| 104 | STATEMENT | 10/26/07 and 11/09/07 | Stip |

| | | | |
|-----------------------|---|---------------------------------|------------------|
| 105 | Transaction History *Paid in full | 10/27/07 through 06/23/08 | Stip |
| 106-110 | RESERVED | | |
| WEST CHIROPRACTIC | | | |
| 111 | Automobile Accident Questionnaire | Undated | Stip |
| 112 | IRREVOKABLE LIEN AGREEMENT | 11/21/07 | |
| 113 | Chart Notes | 11/21/07 | Stip |
| 114 | Range of Motion Exam | 11/21/07 | Stip |
| 115 | Initial Examination | 11/21/07 | Stip |
| 116 | Notes | 11/21/07 | Stip |
| 117 | DIAGNOSIS (three pages) | 11/21/07 | Stip |
| 118 | Computerized Spine Range of Motion Exam | 11/21/07 | Stip |
| 119 | Exam Summary | 11/21/07 | Stip |
| 120 | Patient Summary by Dr. Henry West | 11/21/07 | <i>Admitted</i> |
| 121 | Letter from Dr. Henry West Re: Benjamin Walton | 11/27/07 | |
| 122 | Progress Notes | 11/24/07 through 05/07/08 | Stip |
| 123 | Patient Ledger History | 11/21/07 through 05/07/08 | Stip |
| 124 * | STATEMENT | 02/25/10 | Stip |
| 125 * | Dr. Henry West Resume <i>6/3/10</i> | undated | <i>Denied</i> |
| 126-130 | RESERVED | | |
| IDAHO MEDICAL IMAGING | | | |
| 131 | IMAGING CONSULTATION REQUEST | Undated | Stip |
| 132 | MRI CERVICAL SPINE WITHOUT CONTRAST | 02/19/08 | Stip |
| 133 | IDAHO MEDICAL IMAGING Statement | 02/19/08 | Stip |
| 134 * | Letter from IDAHO MEDICAL IMAGING re: payment arrangements of \$10 per month. | 06/13/09 | <i>Withdrawn</i> |
| 135 * | Copy of MRI Computer Disc | 02/19/08 | |
| 136 * | Copy of MRI Spine; Cervical Page 1 | 02/19/08 | <i>Stip</i> |
| 137 * | Copy of MRI Spine; Cervical Page 2 | 02/19/08 | <i>Stip</i> |
| 138 * | Copy of MRI Spine; Cervical Page 3 | 02/19/08 | <i>Stip</i> |
| 139 * | Copy of MRI Spine; Cervical Page 4 | 02/19/08 | <i>Stip</i> |
| 140 * | Copy of MRI Spine; Cervical Page 5 | 02/19/08 | <i>Stip</i> |
| 141 * | Copy of MRI Spine; Cervical Page 2436 | 02/19/08 | <i>Stip</i> |

| | | | |
|---------|--|----------|-----------------|
| 142-144 | RESERVED | | |
| 145 * | IME Report on Benjamin Walton by David C. Simon, M.D. | 02/02/10 | Admitted 6/3/10 |
| 146 * | IME Report on Mat Bennett by David C. Simon, M.D. | 02/02/10 | Admitted 6/3 |
| 147 * | David C. Simon, M.D. Curriculum Vitae | Undated | Withdrawn |
| 148 * | Cost of the future medical care recommended by Dr. Simon for Ben Walton from Portneuf Medical Center | | Denied 6/3/10 |
| 149 * | RESERVED | | |
| 150 * | Mat Bennett Medical Bills Summary | undated | Admitted 6/2 |
| 151 * | Mathew Bennett Damages Summary | undated | |
| 152 * | Benjamin Walton Medical Bills Summary | undated | Admitted 6/2 |
| 153 * | Benjamin Walton Damages Summary | undated | |
| 154-200 | RESERVED | | |

* Indicate's New Records

COURT MINUTES

CV-2008-0004528-PI

Mathew R. Bennett, etal. vs. Nancy Patrick

2010 JUN -7 AM 10:44

[Signature]
CLERK

Hearing type: Jury Trial (Day 1)

Hearing date: 06/02/2010

Time: 9:00 am

Judge: David C Nye

Courtroom: 300

Court reporter: Stephanie Morse

Minutes Clerk: Amy Wegner

Charles Johnson - Attorney for Plaintiffs

Brendon Taylor - Attorney for Defendant

| | |
|------|---|
| 9:00 | Begins |
| 9:01 | Roll Call |
| 9:04 | Initial instructions by Court |
| 9:09 | Voir dire, Katiemarie Ashby was excused and replaced with Mary Nielsen, Mary Nielsen was excused and replaced with David Fielder, David Fielder was excused and replaced with Ian Trulson, Michael Hawkes was excused and replaced with David Wren, Amy Brown was excused and replaced with Karl Heiner, Heather Dunn was excused and replaced with Nalani Hunt, Alyssa Mitchell was excused and replaced with Tamera Davenport |
| 9:35 | PA Johnson, voir dire |
| 9:47 | DA Taylor, voir dire, David Wren is excused and replaced with Raylin Ludwig, Raylin Ludwig was excused and replaced with Addison Thomson, Verena Simmons was excused for cause and replaced with Camille Bytendorp |
| 9:54 | PA Johnson, questioning of juror Mariah White, excused for cause and replaced |

with Tamara Emfield

9:55 DA Taylor continued voir dire

9:59 PA Johnson individual voir dire, names called for jurors

10:12 Morning recess

10:34 Back in session, outside presence of jury, exhibits

10:35 Jury present, jury instructions 1-9

10:49 PA Johnson, opening statement

11:10 DA Taylor, opening statement

11:20 PA Johnson, c/s/t Kelly Bennett

11:33 DA Taylor, cross examination and witness excused

11:39 Jury excused to hear a motion outside their presence

11:40 PA Johnson, motion

11:41 DA Taylor, response

11:42 PA Johnson, rebuttal

11:45 Court: will give a curative instruction to the jury, no further inquiry regarding workers' compensation

11:46 Jury present, curative instruction, roll call waived

11:47 PA Johnson, c/s/t Benjamin Walton

12:05 Lunch recess

1:16 Back in session , jury present, roll call waived

1:17 PA Johnson, continued examination of witness

1:29 Jury excused

1:30 DA Taylor, objection

1:32 Jury back, continued examination of witness, roll call waived

1:43 Jury excused to hear objection outside their presence, objection overruled

1:46 Jury back, roll call waived, continued examination of witness
1:48 DA Taylor, cross examination
2:01 Jury excused, argument on motion in limine
2:06 Jury back, roll call waived, continued cross examination of the witness
2:11 PA Johnson, redirect examination, offered 152 and 153,
2:15 Jury excused, objections regarding exhibit, Exhibit 152 is admitted
2:20 Jury back, roll call waived, continued redirect examination of witness
2:22 Jury excused, objection regarding Exhibit 153
2:35 Jury back, roll call waived, continued redirect
2:37 DA Taylor, recross examination
2:46 PA Johnson, redirect examination, witness excused
2:49 PA Johnson, c/s/t Matthew Bennett
3:20 Afternoon recess, jury excused
3:21 DA Taylor, objection to Exhibit 67
3:22 Recess
3:42 Back in session, witnesses are excused
3:43 Jury present, roll call waived
3:45 PA Johnson, c/s/t Ronald B. Rutten
3:57 Jury excused for objection outside their presence, DA Taylor, objection sustained
4:03 Jury present, roll call waived, continued direct examination
4:04 DA Taylor, cross examination, witness excused
4:10 PA Johnson, Matthew Bennett recalled, offered and admitted Exhibit 150
4:27 DA Taylor, cross examination
4:46 PA Johnson, redirect examination

4:51 DA Taylor, re-cross examination, witness excused

4:52 Adjourned for the day

Charles Johnson
JOHNSON OLSON CHARTERED
P.O. Box 1725
Pocatello, Idaho 83204-1725
Telephone: (208) 232-7926
Facsimile: (208) 232-9161
ISB No. 2464
E-Mail: cjlaw@cableone.net
Attorney for Plaintiffs

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2008 JUN 18 PM 3:22

27- 
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|-----------------------|---|---|
| MATHEW R. BENNETT and |) | Case No. CV-08-4528-PI |
| BENJAMIN L. WALTON, |) | |
| |) | |
| Plaintiffs, |) | MOTION FOR COSTS AND ATTORNEY'S FEES |
| |) | OF THE PREVAILING PARTY ON JURY |
| vs. |) | VERDICT and JUDGMENT ON THE VERDICT |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

The plaintiffs, Mathew R. Bennett and Benjamin L. Walton, through their counsel of record, hereby files this Motion for Costs and Attorney's Fees of the prevailing party on the Jury Verdict and Judgment on Verdict in this case. The Court should award the plaintiffs their costs and attorney's fees of the prevailing party on the judgment on the verdict pursuant to Idaho Rule of Civil Procedure 54 (on costs with attached costs bill and attorney fees bills), 68 on Ben Walton and 68(b) on the "adjusted award" on offers of judgment as to the plaintiff Bennett, and Idaho Code § 12-120(4) on allowance of attorney's fees in small personal injury claims. This motion is based on the pleadings and documents on file in this matter, including the attached affidavit and brief.

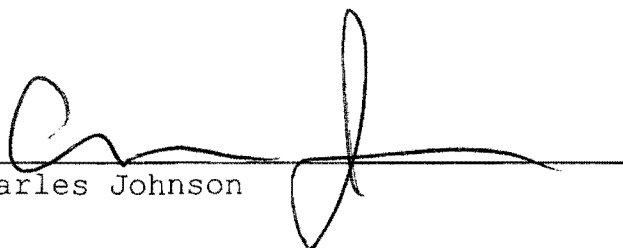
MOTION

1

WHEREFORE, based on the applicable law that awards attorney's fees, the plaintiffs request an award of costs and attorney fees as set out below.

| Plaintiff | Costs | Attorney fees | Total |
|----------------|----------|---------------|---------------------|
| Mathew Bennett | \$994.54 | \$16,512.50 | \$17,507.04 |
| Ben Walton | \$895.98 | \$18,152.50 | \$19,048.48. |

DATED this 18th day of June 2010.

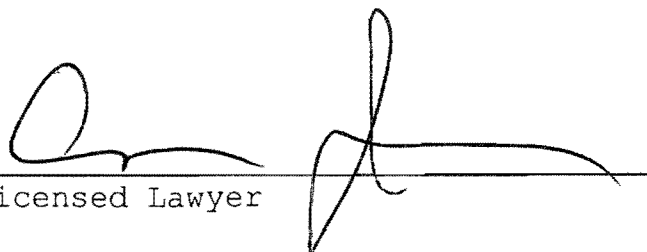

Charles Johnson

CERTIFICATE OF MAILING

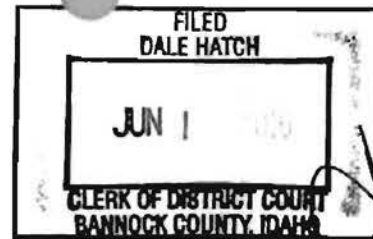
I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing document, by placing the same in the United States mail, postage prepaid addressed as follows:

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
P.O. Box 991
Pocatello, Idaho 83204-0991

on this 18th day of June 2010.


Licensed Lawyer

Charles Johnson
JOHNSON OLSON CHARTERED
P.O. Box 1725
Pocatello, Idaho 83204-1725
Telephone: (208) 232-7926
Facsimile: (208) 232-9161
ISB No. 2464
E-Mail: cjlaw@cableone.net



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|-----------------------|---|--|
| MATHEW R. BENNETT and |) | Case No. CV-08-4528-PI |
| BENJAMIN L. WALTON, |) | |
| |) | MEMORANDUM OF COSTS AND AFFIDAVIT |
| Plaintiffs, |) | OF CHARLES JOHNSON IN SUPPORT OF |
| |) | MOTION FOR COSTS AND FEES |
| vs. |) | |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

STATE OF IDAHO)
 :ss
County of Bannock)

Charles Johnson, after being first duly sworn, does hereby
depose and say as follows:

1. I am counsel and attorney for plaintiffs Bennett and
Walton in the above-entitled action. This affidavit is based on my
own knowledge and information.

2. I file this affidavit in support of the motion for costs
and attorney's fees under Idaho Rule of Civil Procedure 54 (on
costs with attached costs bill and attorney fees bills), IRCP 68 on
Ben Walton and IRCP 68(b) on the "adjusted award" on offers of
judgment as to the plaintiff Bennett, and Idaho Code § 12-120(4) on
allowance of attorney's fees in small personal injury claims.

AFFIDAVIT

1

3. I have been a member of the bar of the State of Idaho since September 1979. I am also admitted to practice before the United States District Court for the District of Idaho, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court.

4. The plaintiffs in this case wrote a statutory demand letter to Allstate under Idaho Code § 12-120(4) on both plaintiffs Mat Bennett and Ben Walton. A true and correct copy of this demand letter is attached as Exhibit 161.

5. The demand letter complied in all material respects with Idaho Code § 12-120(4). A copy of the plaintiffs' exhibit list with all medical records of the plaintiffs were attached. There was also included some prior letters written to Allstate on this case because of Allstate's failure to pay the property damage claim (but it was eventually paid following that letter). The plaintiffs waited a period of over 60 days before filing the litigation in this case.

A. PLAINTIFF WALTON

6. In response to this offer on August 20, 2008 Allstate offered Benjamin Walton \$4,600.00; see letter from Allstate attached as Exhibit 162. There was then other correspondence and Allstate made a "final offer" to settle Benjamin Walton's case for \$5,000.00; see letter attached as Exhibit 163.

7. The Court then ordered the parties to mediate in good faith. Allstate cancelled several mediations so their adjuster

could attend, but their adjuster never did attend the mediation in person. In the mediation Allstate increased their offers in increments of only \$100.00. The final Allstate offer at mediation for Benjamin Walton was \$6,484.00. Allstate also filed one offer of judgment for Benjamin Walton in this same amount; see Offer of Judgment dated April 29, 2010 attached as Exhibit 164.

B. PLAINTIFF BENNETT

8. In response to the 12-120(4) letter attached as Exhibit 161, Allstate's first offer to Mathew Bennett was \$2,300.00, including \$710.45 for reasonable and customary care. A copy of the Allstate letter dated August 20, 2008 is attached as Exhibit 165.

9. Subsequently, there was additional correspondence between the parties. Allstate subsequently increased their offer to Mathew Bennett to \$2,500.00 in a letter dated September 26, 2008. A copy of the Allstate letter dated September 26, 2010 is attached as Exhibit 166.

10. Allstate subsequently increased their offer to Mathew Bennett at the mediation to a total of \$3,424.00. Allstate made an Offer of Judgment in this amount of \$3,424.00 to Mat Bennett dated April 29, 2010 attached (as stated above) as Exhibit 164.

11. Subsequently, on May 18, 2010 Allstate increased their offer of judgment to Mathew Bennett to \$4,432.00; see Offer of Judgment attached as Exhibit 167. This offer of judgment was received by facsimile transmission exactly 14 days before the trial was to begin.

12. The second Allstate offer of judgment did not allow three days for mailing a response under IRCP 6(e)(1), and was not served within a "reasonable time prior to trial" under IRCP 68(a). The Court should either rule that this second offer of judgment was not effective or consider the timeliness of this second offer of judgment in considering the plaintiff Bennett's motion for costs and attorney fees.

13. The jury in this case awarded the following damages:

| | |
|----------------|-----------------|
| Mathew Bennett | \$3,978.47; and |
| Ben Walton | \$10,030.92. |

14. The costs in this case are set out on the attached documents for each plaintiff: the costs for the plaintiff Mat Bennett are attached as Exhibit 168; and the costs for Plaintiff Ben Walton are attached as Exhibit 169. The costs include costs for obtaining medical records, filing fees for the complaint in the amount of \$88.00, service fees of \$80.00, and the depositions of the parties in the amount of \$445.18 (pursuant to invoice), IME travel and time costs, expert witness costs incurred for Henry West and Ron Rutten, copy costs and other expenses. This is our memorandum of costs under IRCP 54(d)(5), including mandatory and discretionary costs.

15. The costs have divided equally between the plaintiffs except where they are clearly for one plaintiff or the other, in which case this is noted on the cost bill.

16. The time and labor required on this case was above average in a contested liability and damages case.

17. The novelty and difficulty of the questions required significant time and a full jury trial.

18. The skill requisite to perform the legal services properly and the experience and ability of this attorney are known to the Court generally.

19. The prevailing charges for similar work are \$120.00 to \$180.00 per hour.

20. This is a contingency case, but the fees requested in this motion are on a fixed hourly rate of \$150.00 an hour.

21. The time limitations imposed by the clients and circumstances of the case were about average.

22. The results obtained were a jury verdict in excess of Allstate's pre-filing offer under Idaho Code § 12-120(4), and in excess of the mediation offers and all offers of judgment on Benjamin Walton; and in excess of the mediation offer and subsequent offer of judgment made except the last second offer of judgment on Mathew Bennett, not including interest, costs and attorney's fees.

23. The case is fairly desirable because the plaintiffs Bennett and Walton are good and decent persons.

24. The awards in similar cases are believed to be similar under Idaho Code § 12-120(4).

25. I have attached to this declaration an itemization of the hours I expended in this case with the tasks that were performed. I was responsible for all of the work listed on the attached itemization which are all related to the jury verdict and judgment for damages.

26. The hours listed are based upon contemporaneous records which I personally kept as I did the work. All of the hours listed were necessary to the prosecution of this case.

27. The attorney fees have been divided equally between the plaintiffs except where they are clearly for one plaintiff or the other, in which case this is noted on the attached attorney fee bills. The attorney fees on investigation on liability, stay relief in bankruptcy, and the summary judgment on liability have all been allocated to Ben Walton, since Mat Bennett as a passenger had no liability, and this actually works to the defendant's benefit by lowering the "adjusted verdict" pursuant to IRCP 68(b) to have Mat Bennett's attorney fees computed for only his damage claims. Finally, since both plaintiffs should be awarded costs and attorney fees, this may not make a difference; but if necessary the plaintiffs could provide the Court with a different allocation of attorney fees based on the issues involved in this case.

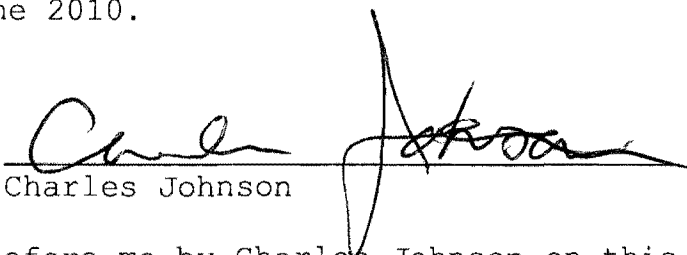
28. There appears to be substantial un-billed attorney fees in the itemization especially for review of the third party liability, trial preparation, watching the video tape and other issues. There were simply no records kept in this case to justify

these charges so they were not billed and no compensation is requested for this time. There were also significant cost and fees savings and economies of scale in representing two plaintiffs.

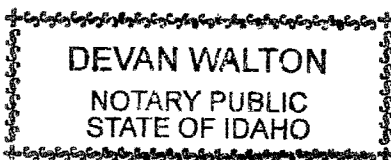
WHEREFORE, based on the applicable law that awards attorney's fees, the plaintiffs request an award of costs and attorney fees as set out below.


| Plaintiff | Costs | Attorney fees | Total |
|----------------|----------|---------------|---------------------|
| Mathew Bennett | \$994.54 | \$16,512.50 | \$17,507.04 |
| Ben Walton | \$895.98 | \$18,152.50 | \$19,048.48. |

DATED this 18th day of June 2010.


Charles Johnson

SUBSCRIBED AND SWORN TO before me by Charles Johnson on this 18th day of June 2010.




NOTARY PUBLIC FOR IDAHO
Residing at Pocatello
Commission Expires: 07/30/2011

JOHNSON OLSON, CHARTERED
P.O. BOX 1725
POCATELLO, IDAHO 83204-1725

L. CHARLES JOHNSON, III
TELEPHONE: (208) 232-7926
FACSIMILE: (208) 232-9161
EMAIL: cjlaw@allidaho.com

July 9, 2008

USE P.O. BOX FOR MAIL
PHYSICAL STREET ADDRESS
419 WEST BENTON
POCATELLO, IDAHO 83204-1725

Beulah Geren
Barrett Saito
Allstate Insurance Company
Idaho-E. Washington
P.O. Box 6828
Boise, Idaho 83707-0828

Re: Mathew Bennett and Benjamin Walton v. Nancy Patrick
INSURED: NANCY PATRICK
DATE OF LOSS: October 18, 2007
CLAIM NO: 0105166771

Dear Ms. Geren and Ms. Saito:

This acknowledges my prior letter to you dated May 8, 2008 (copy enclosed) regarding the case of Mathew R. Bennett and Benjamin L. Walton v. Nancy Patrick. This letter is written to update and supplement that letter with the following information. You have admitted your client is totally at fault and we propose to settle the case in full with Allstate and not pursue claims against the road construction companies who probably have no fault.

First, Mathew Bennett and Benjamin Walton have basically completed their treatment and substantially recovered from the injuries they suffered from the motor vehicle collision in this case. They continue to have some minor residual pain and suffering but have now completed their chiropractic treatment with Dr. Henry West.

Second, I am enclosing an Exhibit List including all the medical records for Mathew Bennett and Benjamin Walton in this case. There are no other medical records on treatment of these individuals that we know of at this time.

Third, I am enclosing a list of the medical providers, medical bills, and damages summaries for these individuals. This includes the full amount of their wage loss to date.

Benjamin Walton was seen at the emergency room immediately after the motor vehicle collision. He had severe neck pain and complained of being nauseated. Benjamin Walton was diagnosed with Cervical Spine Strain and Lumbar Spine Strain. He was instructed to wear a soft collar for a week, do no lifting, and then follow up with his physician if his condition did not improve. The x-rays at the hospital showed a mild straightening of the lumbar spine associated with muscle spasm.

Ben Walton was then seen by Dr. Richard Maynard for pain and stiffness in his lower back. He missed work for about one week, causing losses of \$1,000.00 to \$1,200.00. He was treated conservatively with pain relievers and then chiropractic treatment from Dr. Henry West.

The medical records of Dr. Henry West were positive for several tests with limited range of motion and pain in his cervical spine, foraminal compression tests, shoulder depressant tests, Bickele's test, the Sitting root tests and bilateral leg raise. The cervical spine x-rays show a significant injury at C-7.

The cervical spine MRI shows minor posterior broad-based disc bulges at C4-5 and C5-6 and cervical disc syndrome from the motor vehicle collision. Dr. Henry West diagnosed Benjamin Walton with acute traumatic side lash cervical sprain/strain, brachial radiculopathy, and mid-level inter-segmental dysfunction characterized by akinesis and acute lumbar strain and limitations in the range of motion in the cervical and lumbar spine.

However, Benjamin Walton's injuries significantly improved from the chiropractic treatment administered by Dr. Henry West. He advises that at this point he still has only minimal residual pain and stiffness in his neck and some headaches that he treats with over-the-counter medication.

Mathew Bennett was seen at the emergency room immediately after the motor vehicle collision. He complained of moderate neck and back pain with stiffness and chest pain. He was diagnosed with acute and chronic musculoskeletal low back pain from the motor vehicle collision. He was given medications, including Flexoral, and Vicodin. Dr. Evan Holmstead saw Mathew Bennett on October 30, 2007 for his complaints of low back pain from the motor vehicle collision. He has limited range of motion with a finding of objective paraspinal muscle spasm. He was given a release from work from Evan Holmstead, M.D., (marked as Exhibit 53). He then received physical therapy at Portneuf Physical Therapy for about three weeks. He attempted to work but his back pain flared up during this process. He improved slowly and had some progress from this treatment, but still had returning flare ups in his pain.

On November 20, 2007 Mathew Bennett was again seen at the emergency room for low back pain. He was apparently unable to work for about another week after this flare up in his symptoms. The doctor again found lumbar muscle spasm with low back pain and continued him on physical therapy and light duty work, and continued his prescription of Flexoral and other pain relievers. He has worked in pain for the last several months.

Mathew Bennett then sought further chiropractic treatment from Dr. Henry West for his injuries. His tests were positive for several objective problems. He then received chiropractic treatment, including DMT spinal, electro-stimulation, and ultrasound. He has substantially recovered after his treatment from physical therapy and treatment from Dr. West, but he still uses over-the-counter pain medications.

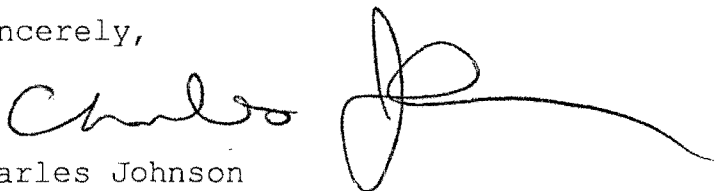
In my opinion, a reasonable Bannock County jury would find no negligence on the part of Benjamin Walton and find Nancy Patrick totally at fault. However, if this claim is not resolved with your organization then Mathew Bennett and Benjamin Walton reserve the right to join any other parties that are or may be responsible in this case.

Finally, I have summarized Mathew Bennett and Benjamin Walton's medical bills, pain and suffering and lost wages on the enclosed damages summaries. A reasonable Bannock County jury would probably award reasonable compensation and damages to Mathew Bennett in the amount of at least \$20,000.00, and Benjamin Walton in the amount of at least \$23,000.00.

Therefore, these claimants would be willing to settle this case for a payment to them in these amounts, if accepted within the next sixty (60) days. If this offer is not accepted then Mathew Bennett and Benjamin Walton reserve the right to file a lawsuit for recovery of their damages, lost wages, costs, expenses and attorney's fees pursuant to Idaho Code § 12-120(4).

If you have any questions or comments, please call or write.

Sincerely,


Charles Johnson

CJ/nv
Enclosure

c: Clients



Allstate.

You're in good hands.

Idaho Washington
P O B 5828
BOISE ID 83707

JOHNSON OLSON, CHARTERED
PO BOX 1725
POCATELLO ID 83204-1725

August 20, 2008

INSURED: NANCY PATRICK
DATE OF LOSS: October 18, 2007
CLAIM NUMBER: 0105166771

PHONE NUMBER: 800-359-5565
FAX NUMBER: 866-514-2967
OFFICE HOURS: Mon - Fri 8:00 am - 5:30 pm,
Sat 8:00 am - 2:00 pm

YOUR CLIENT: Benjamin Walton

Dear Mr. Olson,

This letter is in follow up to our phone conversation on August 20, 2008 in which I advised the evaluation of your clients claim has been completed.

After review of the medical records I have considered the injuries of a cervical and thoracolumbar strain as a result of the accident. Mr. Walton's treatment incurred through November 2007 is reasonable and customary in relation to the accident. Following this time he has a 2.5 month gap before seeking treatment at The West Clinic which is compelling. As discussed, I would like to review your clients prior medical records to determine his baseline in regards to the C4-5 and C5-6 disc bulge confirmed by the MRI.

At this time, I am prepared to offer \$4,600.00 in settlement of your clients injury claim. This amount includes \$2,741.22 for reasonable, customary and related care. After you've had the opportunity to discuss this with your client please contact me at 208-321-5993.

Sincerely,

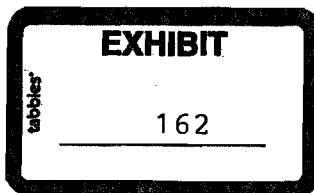
BARRETT SAITO

BARRETT SAITO
800-359-5565 Ext.5993
Allstate Insurance Company

RECEIVED

AUG 25 2008

JOHNSON OLSON, CHTD





Allstate.

You're in good hands.

Idaho Washington
P O BOX 6828
BOISE ID 83707

JOHNSON OLSON, CHARTERED
PO BOX 1725
POCATELLO ID 83204-1725

September 26, 2008

INSURED: NANCY PATRICK
DATE OF LOSS: October 18, 2007
CLAIM NUMBER: 0105166771

PHONE NUMBER: 800-359-5565
FAX NUMBER: 866-514-2967
OFFICE HOURS: Mon - Fri 8:00 am - 5:30 pm,
Sat 8:00 am - 2:00 pm

YOUR CLIENT: Benjamin Walton

Dear Mr. Johnson,

We are in receipt of your September 15, 2008 letter and your client's counter demand of \$20,000.00.

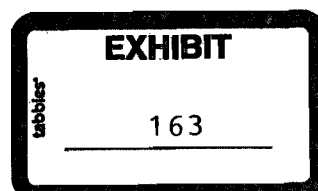
After additional review of your client's medical records Mr. Walton was diagnosed with cervical, thoracic and lumbar strains. Although his treatment was extended over a long period of time, it was minimal. The physicians offered a good prognosis and do not indicate residual effects. As you are aware Mr. Walton had several lengthy gaps in his treatment. This raises concern about the severity of Mr. Walton's injuries and the need for care.

Unfortunately, I am unable to accept his demand, however, I am willing to increase my offer to \$5,000.00, inclusive. Please contact me at 1-800-359-5565 ext. 5993.

Sincerely,

BARRETT SAITO

BARRETT SAITO
800-359-5565 Ext.5993
Allstate Insurance Company



Brendon C. Taylor
Jared A. Steadman
MERRILL & MERRILL, CHARTERED
109 North Arthur - 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Idaho State Bar #6078, 7804

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

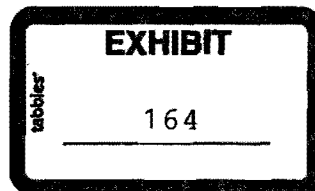
| | | |
|---|---|--------------------------|
| MATHEW R. BENNETT and BENJAMIN L. WALTON, |) | |
| |) | Case No. CV-08-4528-PI |
| |) | |
| Plaintiffs, |) | OFFER OF JUDGMENT |
| |) | |
| vs. |) | |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

To: Matthew R. Bennett, Benjamin L. Walton and their attorney, Charles Johnson,

Pursuant to Rule 68 of the Idaho Rules of Civil Procedure, Defendant Nancy Patrick, by and through her attorneys of record, Merrill & Merrill, Chartered, hereby offer to allow Judgment to be taken against her by Plaintiffs as follows:

Plaintiff Matthew R. Bennet may take judgment in the amount of Three Thousand Thirty-two and No/100 Dollars (\$3,432.00). By this offer, Plaintiff would be required to pay any and all remaining subrogation demands or claims of liens, any attorney fees allowable by contract or by law as well as the costs incurred to date. This Offer of Judgment is made for the purpose specified in Rule 68 and is not to be construed as an admission that this Defendant is liable in this action or as an admission that the Plaintiff has suffered any damage. This Offer of Judgment is governed entirely

Offer of Judgment
7783



Page 1

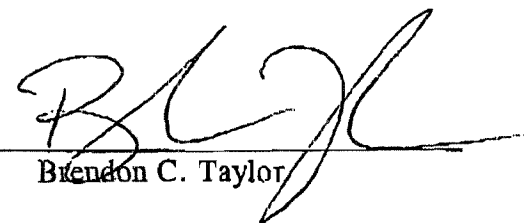
by the terms and conditions stated in Rule 68, specifically including, but not limited to, the provision that the acceptance of this Offer of Judgment must be in writing within fourteen (14) days after the service of this Offer.

Plaintiff Benjamin L. Walton may take judgment in the amount of Six Thousand Four Hundred Eighty-Four and No/100 Dollars (\$6,484.00). By this offer, Plaintiff would be required to pay any and all remaining subrogation demands or claims of liens, any attorney fees allowable by contract or by law as well as the costs incurred to date. This Offer of Judgment is made for the purpose specified in Rule 68 and is not to be construed as an admission that this Defendant is liable in this action or as an admission that the Plaintiff has suffered any damage. This Offer of Judgment is governed entirely by the terms and conditions stated in Rule 68, specifically including, but not limited to, the provision that the acceptance of this Offer of Judgment must be in writing within fourteen (14) days after the service of this Offer.

Dated this 29th day of April, 2010.

MERRILL & MERRILL, CHARTERED

By:

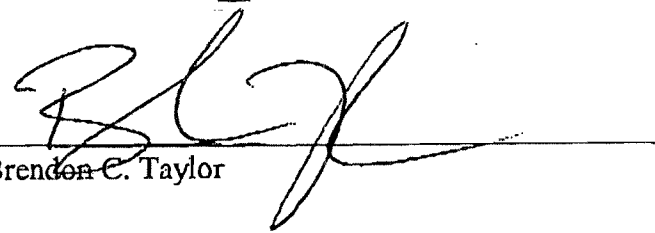

Brendon C. Taylor

CERTIFICATE OF SERVICE

I, Brendon C. Taylor, the undersigned, one of the attorneys for the Defendant, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Offer of Judgment was this 29th day of April, 2010, served upon the following in the manner indicated below:

Charles Johnson
JOHNSON OLSON CHARTERED
P.O. Box 1725
Pocatello, ID 83204

☐ U.S. Mail
☒ Hand Delivery *and/or*
☐ Overnight Delivery
☒ Telefax


Brendon C. Taylor

Offer of Judgment
7783

Page 2



Allstate.

You're in good hands.

Idaho Washington
P O Box 5828
BOISE ID 83707

JOHNSON OLSON, CHARTERED
PO BOX 1725
POCATELLO ID 83204-1725

August 20, 2008

INSURED: NANCY PATRICK
DATE OF LOSS: October 18, 2007
CLAIM NUMBER: 0105166771

YOUR CLIENT: Mathew Bennett

PHONE NUMBER: 800-359-5565
FAX NUMBER: 866-514-2967
OFFICE HOURS: Mon - Fri 8:00 am - 5:30 pm,
Sat 8:00 am - 2:00 pm

Dear Mr. Johnson,

This letter is in follow up to our phone conversation on August 20, 2008 in which I advised the evaluation of your clients claim has been completed.

After review of the medical records I have considered the injuries of a cervical and lumbar strain as a result of the accident. Mr. Bennett's treatment is reasonable until a subsequent work injury that occurred on or around November 20, 2007. Following this, your client had an increase in pain and an onset of new radicular type symptoms in the lower back. Although I considered the physical therapy care following the work incident I do not feel the additional follow up visit at Mountview Family Medicine and at The West Clinic is related to the auto accident. Mr. Bennett also has a compelling 3-4 month gap before he seeks treatment at The West Clinic. You've indicated Mr. Bennett was released from work immediately following this accident however I do not have a physicians disability statement prior to the work related injury or verification from his employer to support any time missed. If you have this information please submit it to me for review.

At this time, I am prepared to offer \$2,300.00 in settlement of your clients injury claim. This amount includes \$710.45 for reasonable, customary and related care. After you've had the opportunity to discuss this with your client please contact me at 208-321-5993.

Sincerely,

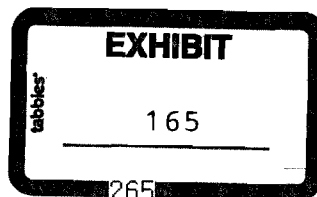
BARRETT SAITO

BARRETT SAITO
800-359-5565 Ext.5993
Allstate Insurance Company

RECEIVED

AUG 25 2008

JOHNSON OLSON, CHTD





Allstate.

You're in good hands.

Idaho Washington
P O BOX 6828
BOISE ID 83707

JOHNSON OLSON, CHARTERED
PO BOX 1725
POCATELLO ID 83204-1725

September 26, 2008

INSURED: NANCY PATRICK
DATE OF LOSS: October 18, 2007
CLAIM NUMBER: 0105166771

YOUR CLIENT: Mathew Bennett

PHONE NUMBER: 800-359-5565
FAX NUMBER: 866-514-2967
OFFICE HOURS: Mon - Fri 8:00 am - 5:30 pm,
Sat 8:00 am - 2:00 pm

Dear Mr. Johnson,

We are in receipt of your September 15, 2008 letter. Thank you for advising us of your client's counter demand of \$15,000.00.

Your letter advises that Mr. Bennett did not sustain a subsequent work injury on or around November 20, 2007 and there were no new radicular type symptoms. I have enclosed a copy of the record from Mountain View Family Medicine for date of service November 29, 2007. As you can see it is noted that Mr. Bennett reports injuring his back the previous week while bending over at work. As a result, "he developed a stabbing pain in his back." This was significant enough for Mr. Bennett to seek treatment at the local emergency room and he reports being unable to work for at least a week. Prior to this incident on October 30, 2007 Mr. Bennett reports having no radicular symptoms. With this, it is obvious your client sustained a new injury with new complaints unrelated to the auto accident.

Unfortunately, I am unable to accept his demand of \$15,000.00, however I am willing to increase my offer to \$2,500.00, inclusive. Please contact me at 1-800-359-5565 ext. 5993 to discuss this further.

Sincerely,

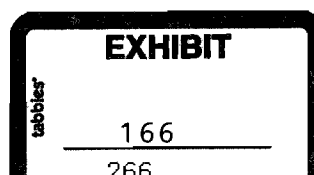
BARRETT SAITO

BARRETT SAITO
800-359-5565 Ext.5993
Allstate Insurance Company

RECEIVED

SEP 29 2008

JOHNSON OLSON, CHTD



GENI001

Brendon C. Taylor
 Jared A. Steadman
MERRILL & MERRILL, CHARTERED
 109 North Arthur - 5th Floor
 P.O. Box 991
 Pocatello, ID 83204-0991
 (208) 232-2286
 (208) 232-2499 Telefax
 Idaho State Bar #6078, 7804

Attorneys for Defendant

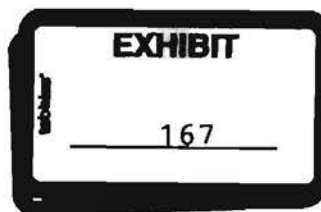
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|-----------------------------------|---|--------------------------|
| MATHEW R. BENNETT and BENJAMIN L. |) | |
| WALTON, |) | Case No. CV-08-4528-PI |
| |) | |
| Plaintiffs, |) | OFFER OF JUDGMENT |
| |) | |
| vs. |) | |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |
| |) | |

To: Mathew R. Bennett and his attorney, Charles Johnson,

Pursuant to Rule 68 of the Idaho Rules of Civil Procedure, Defendant Nancy Patrick, by and through her attorneys of record, Merrill & Merrill, Chartered, hereby offer to allow Judgment to be taken against her by Plaintiff Mathew Bennett in the amount of Four Thousand Thirty-two and No/100 Dollars (\$4,432.00). By this offer, Plaintiff would be required to pay any and all remaining subrogation demands or claims of liens, any attorney fees allowable by contract or by law as well as the costs incurred to date. This Offer of Judgment is made for the purpose specified in Rule 68 and is not to be construed as an admission that this Defendant is liable in this action or as an admission that the Plaintiff has suffered any damage. This Offer of Judgment is governed entirely by the terms and conditions stated in Rule 68, specifically including, but not limited to, the provision

Offer of Judgment
 7783



Page 1

that the acceptance of this Offer of Judgment must be in writing within fourteen (14) days after the service of this Offer.

Dated this 18th day of May, 2010.

MERRILL & MERRILL, CHARTERED

By:


Brendon C. Taylor

CERTIFICATE OF SERVICE

I, Brendon C. Taylor, the undersigned, one of the attorneys for the Defendant, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Offer of Judgment was this 18th day of May, 2010, served upon the following in the manner indicated below:

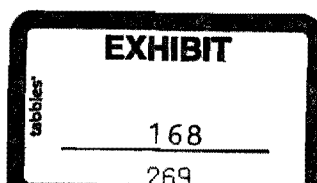
Charles Johnson
JOHNSON OLSON CHARTERED
P.O. Box 1725
Pocatello, ID 83204

☐ U.S. Mail
☐ Hand Delivery
☐ Overnight Delivery
☒ Telefax


Brendon C. Taylor

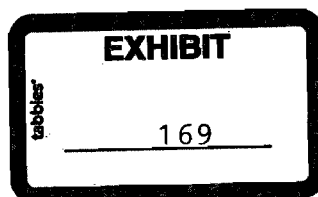
| MAT BENNETT'S PRE-OFFER COSTS | | |
|--------------------------------|---|------------|
| DATE | DESCRIPTION | COST |
| 03/14/08 | Chart-One Medical Records (Portneuf) | \$85.75 |
| 05/15/08 | Shop-Ko Stores (Records) | \$15.00 |
| 11/05/08 | *Bannock County Clerk Filing Fee (Verified Complaint) | \$44.00 |
| 11/10/08 | Bannock County Sheriff (Service Fee) | \$20.00 |
| 10/01/09 | Nancy Patrick Deposition | \$98.91 |
| 10/01/09 | Mat Bennett's Deposition | \$118.08 |
| 02/02/10 | IME Travel (110 miles at .46 cents) and Attendance (Lost Wages \$50.00 @ 10/hr) | \$100.00 |
| 03/16/10 | Copies of Exhibits | \$15.30 |
| 04/26/10 | Dr. David Simon Subpoena | \$27.50 |
| 05/10/10 | Bonneville County Sheriff (Serve Dr. David Simon with Subpoena) | \$20.00 |
| 05/11/10 | Dr. Henry West (Expert Witness Fee) incurred and became liable on 5-11-10, paid one half or \$200.00 on 5-11-10 | \$400.00 |
| 05/17/10 | Ron Rutten (Witness Fee); incurred and became liable on 5-17-10, but not billed until post-trial | \$50.00 |
| TOTAL PRE-OFFER COSTS | | \$994.54 |
| MAT BENNETT'S POST-OFFER COSTS | | |
| DATE | DESCRIPTION | COST |
| 05/28/10 | Kinko's Copies | \$21.54 |
| 06/02/10 | Kinko's Charts | \$9.00 |
| TOTAL POST-OFFER COSTS | | \$30.54 |
| TOTAL PRE AND POST OFFER COSTS | | \$1,025.08 |

* Costs have been billed 50/50 to each plaintiff



| BENJAMIN WALTON'S COSTS | | | |
|-------------------------|---|----------|-----|
| DATE | DESCRIPTION | COST | |
| 03/14/08 | Chart-One Medical Records (Portneuf) | \$60.44 | No |
| 11/05/08 | * Bannock County Clerk Filing Fee (Verified Complaint) | \$44.00 | Yes |
| 11/10/08 | Bannock County Sheriff (Service Fee) | \$20.00 | Yes |
| 10/01/09 | Nancy Patrick Deposition | \$98.91 | Yes |
| 10/01/09 | Ben Walton's Deposition | \$129.29 | Yes |
| 02/02/10 | IME Attendance (Lost Wages \$50.00 @ 10/hr) | \$50.00 | No |
| 03/16/10 | Copies of Exhibits | \$15.30 | No |
| 04/26/10 | Dr. David Simon Subpoena | \$27.50 | Yes |
| 05/10/10 | Bonneville County Sheriff (Serve Dr. David Simon with Subpoena) | \$20.00 | Yes |
| 05/11/10 | Dr. Henry West (Expert Witness Fee) incurred and became liable on 5-11-10, paid one half or \$200.00 on 5-11-10 | \$400.00 | |
| 05/28/10 | Kinko's Copies | \$21.54 | |
| 06/02/10 | Kinko's Charts | \$9.00 | |
| TOTAL COSTS | | \$895.98 | |

* Costs have been billed 50/50 to each plaintiff



JOHNSON OLSON, CHARTERED
P.O. BOX 1725
POCATELLO, IDAHO 83204-1725

L. CHARLES JOHNSON, III
TELEPHONE: (208) 232-7926
FACSIMILE: (208) 232-9161
E-MAIL: cjlaw@cableone.net

6/18/2010

USE P.O. BOX FOR MAIL
PHYSICAL STREET ADDRESS
419 WEST BENTON
POCATELLO, IDAHO 83204-1725

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|--------------------|--|-------|--------------------|
| 10/31/2007 | Balance forward | | 0.00 |
| 11/29/2007 | Correspondence - Mat called re: accident, not working, he will follow up with doc | 0.3 | 45.00 |
| 12/07/2007 | Investigation; Research - Review Police Report and Records in file; Called by Matt he is back at work, light duty | 0.9 | 135.00 |
| 12/10/2007 | Correspondence - Matt called, just rec Hospital lien | 0.1 | 15.00 |
| 12/12/2007 | Correspondence; Document Preparation - Letter to Clients re: case, draft letter to Allstate, and Attorney/Client Agreement | 0.75 | 112.50 |
| 12/17/2007 | Correspondence - Spoke to Officer Clint Goss Re: Case and Idaho Vehicle Collision Report | 0.15 | 22.50 |
| 12/18/2007 | Correspondence - Spoke to Kelly (Mat's wife) will sign docs, docs include ER, Holmstead, and Porntuef Physical Therapy | 0.2 | 30.00 |
| 12/21/2007 | Correspondence - Letter to Allstate Re: Claim and forward records | 0.3 | 45.00 |
| 12/31/2007 | Correspondence - Called Allstate Re: case forward policy to office | 0.5 | 75.00 |
| Balance Due | | | \$16,512.50 |

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 01/02/2008 | Correspondence - Letters to Doctors and Portneuf Re: Request for Mat Bennett's medical records | 0.4 | 60.00 |
| 01/02/2008 | Correspondence - Letter to Jason Walton with draft Affidavit | 0.3 | 45.00 |
| 01/03/2008 | Correspondence - Called by Allstate Re: case did not get fax letter, resend | 0.2 | 30.00 |
| 01/04/2008 | Correspondence - Rec fax from Allstate, no comparative negligence on Benjamin, pymt made at time of settlment on medical bills | 0.3 | 45.00 |
| 01/11/2008 | Correspondence - Rec letter from Allstate, forwarding check for property damage, and case | 0.3 | 45.00 |
| 01/16/2008 | Correspondence - Rec fax letter from Allstate re: case and med pay policy and send letter to Allstate re: med pay, bills, and Patrick Policy | 0.5 | 75.00 |
| 01/17/2008 | Correspondence - Called Mat re: case, released to work, get docs to foward to ins co and letter to Dr. Holmstead re: case and records | 0.4 | 60.00 |

Balance Due \$16,512.50

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|--------------------|--|-------|--------------------|
| 01/17/2008 | Correspondence - Letter to Allstate re: case and policy request | 0.6 | 90.00 |
| 01/22/2008 | Correspondence - Investigate Liability of Other Parties | 0.1 | 15.00 |
| 02/04/2008 | Correspondence - Called Allstate, update on medical, both still in treatment, Matt PT et cetera, advise when get more info | 0.2 | 30.00 |
| 02/15/2008 | Correspondence - Second Request letter to Dr. West | 0.2 | 30.00 |
| 04/22/2008 | Called Mat Re: Lost wages from work (call Debi for info), probably lost about 10 days of work? | 0.2 | 30.00 |
| 05/08/2008 | Correspondence - Letter to Allstate re: case, Ben and Mat treatment, and lost wages and in response to their letter dated April 15, 2008 | 0.5 | 75.00 |
| 05/31/2008 | Research; No Third Party Liability | 1 | 150.00 |
| 06/07/2008 | Correspondence - Called Mat, please advise | 0.1 | 15.00 |
| 07/09/2008 | Correspondence - Final and Mail letter to Allstate Re: damages (12-120 letter) | 0.5 | 75.00 |
| 08/20/2008 | Correspondence - Allstate called re: Mat injuries, offered \$2,300 | 0.3 | 45.00 |
| Balance Due | | | \$16,512.50 |

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|--------------------|---|-------|--------------------|
| 08/26/2008 | Correspondence - Letter to Ben re: case and offer from Allstate | 0.2 | 30.00 |
| 09/15/2008 | Correspondence - Letter to Dr. West Office re: lien and chart notes | 0.3 | 45.00 |
| 09/22/2008 | Correspondence - Rec and Review Copies of Dr. West Medical Records | 0.3 | 45.00 |
| 09/30/2008 | Correspondence; Document Preparaton - Letter to Ben re: Allstate counteroffer, will begin preparing draft complaint | 0.3 | 45.00 |
| 10/18/2008 | Prepare Draft Complaint | 0.5 | 75.00 |
| 10/24/2008 | Final Complaint | 1 | 150.00 |
| 10/27/2008 | Correspondence - Letter to Clients re: case, forward draft complaint, take several years to settle | 0.3 | 45.00 |
| 10/29/2008 | Correspondence - Allstate called re: case, gave best figure, not settle, have surveillance on P's will not send | 0.2 | 30.00 |
| 10/30/2008 | Correspondence - ITLA post re: case | 0.2 | 30.00 |
| 11/05/2008 | Correspondence - Clerk Letter file Summons and Complaint | 0.2 | 30.00 |
| 11/10/2008 | Correspondence - Sheriff Letter to Serve Summons and Complaint | 0.2 | 30.00 |
| Balance Due | | | \$16,512.50 |

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|---|-------|--------|
| 11/18/2008 | Correspondence - Clerk Letter with Return of Service | 0.2 | 30.00 |
| 11/28/2008 | Receive Notice of Appearance for Defendant | 0.1 | 15.00 |
| 12/11/2008 | Correspondence; Document Preparation - Rec Defendant's Answer and Discovery Requests to Plaintiff; BK For Defendant, File Motion to Vacate Discharge and Determine that Stay Does not Apply to PI Claim and Letter to Counsel | 1.5 | 225.00 |
| 01/23/2009 | Correspondence; Pre-trial Discovery; Plaintiff's First Set of Interrogatories and Requests to Defendant | 0.5 | 75.00 |
| 01/26/2009 | Correspondence - Scheduling Conference, all parties served, BK, stay obtained, not settle, discovery in process; Def's Counsel on phone, first setting June 2010 | 0.4 | 60.00 |
| 02/05/2009 | Correspondence; Pretrial Discovery | 0.2 | 30.00 |
| 02/18/2009 | Correspondence; Document Preparation - Discovery Replies - Letter to Clients re: pretrial conference, set case for trial June 2010, and forward draft discovery replies | 0.7 | 105.00 |

Balance Due \$16,512.50

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 02/23/2009 | Correspondence; Document Preparation - Discovery Replies - Work on Draft Discovery Replies | 1 | 150.00 |
| 02/24/2009 | Correspondence - Letter to Cardon Healthcare re: medical lien | 0.2 | 30.00 |
| 03/05/2009 | Correspondence - Rec Letter from Def's Counsel re: HIPPA release | 0.1 | 15.00 |
| 03/11/2009 | Rec and Review Answers to Interrogatories, Medical Release to Defendant, Letter to Counsel to Supp Discovery and Liability | 0.1 | 15.00 |
| 04/08/2009 | Conference with Clients | 0.5 | 75.00 |
| 04/09/2009 | Correspondence - Letters to West and Idaho Medical Imaging and rec and review letter from Def's counsel; Draft Motions | 0.65 | 97.50 |
| 05/07/2009 | Plaintiff's Reply to Defendant's Response and Memorandum in Opposition to Plaintiff's Motion to Compel | 0.5 | 75.00 |
| 06/16/2009 | Supplementation to Record on Failure By Defendant Nancy Patrick to Schedule her Deposition | 0.5 | 75.00 |
| 06/18/2009 | Notice of Deposition for Nancy Patrick | 0.2 | 30.00 |

Balance Due \$16,512.50

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|---|-------|--------|
| 06/24/2009 | Correspondence - Letter to Counsel Re: Hearing Conflict | 0.25 | 37.50 |
| 06/29/2009 | Correspondence - Letter to Clients with Minute Entry and Order, discovery and depositions | 0.25 | 37.50 |
| 07/13/2009 | Call from Counsel re: Deposition and Letter to Clients | 0.35 | 52.50 |
| 07/14/2009 | Correspondence - Letter to Clients re: deposition date and times OK? | 0.2 | 30.00 |
| 08/04/2009 | Correspondence - Letter to Def's Counsel re: Patrick Depo | 0.2 | 30.00 |
| 08/19/2009 | Correspondence - Second Request Letter to Def's Counsel re: Depo | 0.2 | 30.00 |
| 09/21/2009 | Deposition Notice of Nancy Patrick | 0.2 | 30.00 |
| 09/23/2009 | Preparation for Depositions | 2 | 300.00 |
| 09/24/2009 | Attend Depositions of Plaintiffs and Defendant | 2.5 | 375.00 |
| 11/17/2009 | Correspondence - Spoke to Clients re: depositions and signatures | 0.2 | 30.00 |

Balance Due \$16,512.50

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|---|-------|--------|
| 11/18/2009 | Letter to M&M Court Reporting Re: Deposition Changes, Signature Pages and Inquiry as to Patrick Verification and Amended Notice of Hearing | 0.5 | 75.00 |
| 12/18/2009 | Review file and case | 0.2 | 30.00 |
| 01/13/2010 | Correspondence - IME Letter | 0.5 | 75.00 |
| 01/27/2010 | Correspondence - Rec and forward paperwork to clients on IME | 0.15 | 22.50 |
| 02/01/2010 | Correspondence - IME Info/Allstate | 0.5 | 75.00 |
| 02/02/2010 | Correspondence; Document Preparation - Plaintiff's Witness Disclosure | 0.5 | 75.00 |
| 02/04/2010 | Correspondence - Called by Matt, back hurt at IME, needs doc | 0.2 | 30.00 |
| 02/04/2010 | Correspondence - Called Brendon Taylor advised of incident at IME, matt back hurt | 0.2 | 30.00 |
| 02/09/2010 | Correspondence; Document Preparation; Investigation - Reply to Attorney Fees | 0.75 | 112.50 |
| 02/09/2010 | Correspondence - Letter on IME and Mediation | 0.25 | 37.50 |
| 02/12/2010 | Reply to Fees | 0.5 | 75.00 |
| 02/12/2010 | Correspondence - Letters to District Judge Brown and Talor | 0.2 | 30.00 |

Balance Due \$16,512.50

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|---|-------|--------|
| 02/12/2010 | Discovery on Damages | 0.6 | 90.00 |
| 02/16/2010 | Correspondence; Document Preparation; Investigation - Review file, discovery, answers et cetera | 0.8 | 120.00 |
| 02/23/2010 | Correspondence - Rec Letter from Mitchell Brown re: Mediation | 0.2 | 30.00 |
| 02/23/2010 | Correspondence - Called by Judge's Clerk re: Mediation, called Def's Counsel, out left message | 0.2 | 30.00 |
| 03/03/2010 | Correspondence - Mediarion Letter to Judge Mitchell Brown with signed agreement | 0.5 | 75.00 |
| 03/05/2010 | Correspondence; Investigation - Read and review IME reports, letter, and mediation | 1 | 150.00 |
| 03/12/2010 | Correspondence - Def's Counsel called re: mediation, reschedule, called Judge's Clerk mediation cancelled and spoke to Def's office, need another copy of Exhibits, hand delivered copy | 0.5 | 75.00 |
| 03/16/2010 | Review Discovery Replies | 0.5 | 75.00 |
| 03/16/2010 | Review Decision | 0.25 | 37.50 |
| 03/16/2010 | Letter to Counsel | 0.5 | 75.00 |

Balance Due \$16,512.50

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|---|-------|--------|
| 03/17/2010 | Correspondence - Def's counsel called mediation set 4-16-10 will send letter | 0.15 | 22.50 |
| 03/18/2010 | Correspondence - Letter to Clients re: mediation and trial | 0.3 | 45.00 |
| 04/12/2010 | Correspondence - Spoke to Mat, back is better after IME went to physical therapy, helped | 0.2 | 30.00 |
| 04/14/2010 | Review File | 0.1 | 15.00 |
| 04/16/2010 | Attend Mediation | 1.5 | 225.00 |
| 04/21/2010 | Review pleadings file for trial | 0.6 | 90.00 |
| 04/21/2010 | Letter to Docs on Trial and Witness Schedule | 0.75 | 112.50 |
| 04/21/2010 | Set trial schedule and punch list | 0.75 | 112.50 |
| 04/21/2010 | Correspondence - Letter to Dr. Henry West | 0.25 | 37.50 |
| 04/21/2010 | Draft Motion to Compel | 0.35 | 52.50 |
| 04/21/2010 | Correspondence; Document Preparation - Motion to Compel and Called by Dr. Holmstead | 0.7 | 105.00 |
| 04/23/2010 | Correspondence; Document Preparation; Investigation - Letter to Def's Counsel re: doctors depositions and schedule and 3 e-mails to Dr. Maynard | 1.5 | 225.00 |

Balance Due \$16,512.50

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 04/23/2010 | Correspondence - Spoke to Def's Counsel re: Depos, ER records, will stip into evidence, live testimony | 0.5 | 75.00 |
| 04/26/2010 | Correspondence - Letter to Def's Counsel with Subpoena for Simon testimony and letter to Dr. David Simon with Subpoena | 0.75 | 112.50 |
| 04/28/2010 | Work on Deposition Outline for Docs | 0.9 | 135.00 |
| 04/29/2010 | Prep for Depositions | 0.5 | 75.00 |
| 04/29/2010 | Review all Files for Depositions | 1 | 150.00 |
| 04/29/2010 | Add Exhibits 5-7 to Exhibit List | 0.5 | 75.00 |
| 04/29/2010 | Calls and E-mails on Depositions | 0.35 | 52.50 |
| 04/29/2010 | Review O/J and New Discovery Replies | 0.5 | 50.00 |
| 04/30/2010 | Review Docs and Files for Depositions and Finish Depo outline | 0.4 | 60.00 |
| 04/30/2010 | Called by Def's Counsel 3 times and called doc, court reporter depo, and e-mail | 0.5 | 75.00 |
| 05/03/2010 | Two Conversations with Def's Counsel | 0.2 | 30.00 |
| 05/03/2010 | Correspondence - Letter to Def's Counsel | 0.15 | 22.50 |
| 05/03/2010 | Draft Pre-Trial Statement | 0.5 | 75.00 |
| 05/03/2010 | Draft First Rough of Jury Instructions | 0.5 | 75.00 |
| 05/04/2010 | Correspondence - Called by Ron Rutten, Physical Therapist for Mat | 0.3 | 45.00 |

Balance Due \$16,512.50

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|--------------------|--|-------|--------------------|
| 05/04/2010 | Work on Pre-Trial Statement | 0.35 | 52.50 |
| 05/04/2010 | Work on Trial Exhibit List | 0.35 | 52.50 |
| 05/04/2010 | Work on Jury Instructions | 0.7 | 105.00 |
| 05/04/2010 | Correspondence - Ron Rutten, Physical Therapist called re: Subpoena | 0.3 | 45.00 |
| 05/04/2010 | Stipulated Pre-Trial Memorandum with attached Stipulated Trial Exhibit List | 2 | 300.00 |
| 05/04/2010 | Stipulated Pre-Trial Memorandum with attached Stipulated Trial Exhibit List | 2 | 300.00 |
| 05/08/2010 | Research and Draft Motion in Limine | 1 | 150.00 |
| 05/08/2010 | Correspondence - Letter on Medical Exhibits | 0.2 | 30.00 |
| 05/10/2010 | Letter to Bonneville Sheriff to Serve Subpoena on Simon and Letters to Docs | 0.4 | 60.00 |
| 05/11/2010 | Correspondence - Letter to Henry West with prepayment of \$200 of \$400 and work on Plaintiff's Pre-Trial Memo | 0.7 | 105.00 |
| 05/13/2010 | Get MRI Disc, print pics, Exhibits, Plaintiff's Pre-Trial Memorandum, Joint or file separately? | 2 | 300.00 |
| 05/14/2010 | Stipulated Pre-Trial Memorandum and work on Plaintiff's Damages Summaries | 1.75 | 262.50 |
| 05/15/2010 | Research Jury Voir Dire Questions | 1 | 150.00 |
| Balance Due | | | \$16,512.50 |

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|---|-------|--------|
| 05/15/2010 | Finalize Requested Voir Dire Questions | 0.75 | 112.50 |
| 05/15/2010 | Work on Jury Instructions and Esp No. 7 | 1.25 | 187.50 |
| 05/15/2010 | Finalize Jury Instructions | 0.5 | 75.00 |
| 05/17/2010 | Preparation for Court | 0.75 | 112.50 |
| 05/17/2010 | Travel to and from Court | 0.2 | 30.00 |
| 05/17/2010 | Court Appearance | 0.3 | 45.00 |
| 05/17/2010 | Subpoenas | 0.2 | 30.00 |
| 05/18/2010 | Correspondence - Letter to Ron Rutten, Physical Therapist, re: subpoena and testimony | 0.4 | 60.00 |
| 05/18/2010 | Rec Return of Service from Sheriff on Simon Subpoena | 0.1 | 15.00 |
| 05/18/2010 | OFFER OF JUDGMENT CUT OFF DATE / SUBTOTAL \$10,227.50 | 1 | 0.00 |
| 05/19/2010 | Research | 0.15 | 22.50 |
| 05/20/2010 | Work on Order Granting Motion in Limine | 0.75 | 112.50 |
| 05/21/2010 | Trial Prep | 0.4 | 60.00 |
| 05/24/2010 | Preparation for Court | 1.25 | 187.50 |
| 05/25/2010 | Prep for Doctor West | 1.25 | 187.50 |
| 05/25/2010 | Meet with Dr. West | 0.5 | 75.00 |
| 05/27/2010 | Read All Exhibits Again and redact all ins and chiro referral | 1.25 | 187.50 |

Balance Due \$16,512.50

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 05/27/2010 | Work on Case Outline for Trial | 0.5 | 75.00 |
| 05/27/2010 | Preparation for Court | 1.75 | 262.50 |
| 05/28/2010 | Work on Exhibits | 0.7 | 105.00 |
| 05/28/2010 | Letter to Witnesses | 0.2 | 30.00 |
| 05/28/2010 | Call Def's Attorney | 0.2 | 30.00 |
| 05/28/2010 | Rec Letter from Def's Att | 0.2 | 30.00 |
| 05/28/2010 | Correspondence; Document Preparation - Letter to Def's Counsel on Order Granting Limine, Redacted Exhibits, and Research | 1.5 | 225.00 |
| 05/29/2010 | Work on Outline, Review Material | 0.5 | 75.00 |
| 05/29/2010 | PRMC Letter | 0.25 | 37.50 |
| 05/31/2010 | Work on Exhibits and Exhibit List | 0.35 | 52.50 |
| 05/31/2010 | Work on Voir Dire Q's | 0.5 | 75.00 |
| 05/31/2010 | Work on Dr. Simon Outline for Trial | 0.7 | 105.00 |
| 05/31/2010 | Work on Outline for Opening Statements | 1.25 | 187.50 |
| 05/31/2010 | Review Juror Profiles | 1 | 150.00 |
| 06/01/2010 | Final Exhibits | 0.5 | 75.00 |
| 06/01/2010 | Preparation for Court - Meet with Witnesses | 1.5 | 225.00 |
| 06/01/2010 | Work on Outline and Opening Statements | 1 | 150.00 |
| 06/02/2010 | Preparation for Court; Court Appearance; Trial Day 1 | 6.5 | 975.00 |

Balance Due \$16,512.50

6/18/2010

MAT BENETT
1001 BATISTE ROAD
POCATELLO, IDAHO 83201

In Reference To: Bennett & Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 06/03/2010 | Preparation for Court; Court Appearance; Trial Day 2 | 6.25 | 937.50 |
| 06/04/2010 | Preliminary Research | 1.5 | 225.00 |
| 06/04/2010 | Attend Court; Verdict by Jury | 0.25 | 37.50 |
| 06/05/2010 | Research on 12-120 and IRCP 68b | 1.25 | 187.50 |
| 06/07/2010 | Correspondence - Called by West Re; Trial | 0.15 | 22.50 |
| 06/10/2010 | Correspondence - Letter to Clients fowarding Judgment on Verdict & Minute Entry | 0.35 | 52.50 |
| 06/11/2010 | Work on Motion for Additur and Fees | 1.75 | 262.50 |
| 06/15/2010 | Work on Additur | 1 | 150.00 |
| 06/16/2010 | Work on Costs Bill Matt | 1.5 | 225.00 |
| 06/16/2010 | Work on Additur and IRCP 68b | 2.5 | 375.00 |
| 06/17/2010 | Finalize Post Trial Motions | 1 | 150.00 |

Balance Due \$16,512.50

JOHNSON OLSON, CHARTERED
P.O. BOX 1725
POCATELLO, IDAHO 83204-1725

L. CHARLES JOHNSON, III
TELEPHONE: (208) 232-7926
FACSIMILE: (208) 232-9161
E-MAIL: cjlaw@cablone.net

6/18/2010

USE P.O. BOX FOR MAIL
PHYSICAL STREET ADDRESS
419 WEST BENTON
POCATELLO, IDAHO 83204-1725

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|---|-------|--------------------|
| 10/31/2007 | Balance forward | | 0.00 |
| | WALTON/Patrick- | | |
| 11/29/2007 | Ben called saw Dr. West for back/neck pain. Needs MRI, talked about case et cetera | 0.3 | 45.00 |
| 12/12/2007 | Correspondence; Document Preparation - Letter to Clients re: case, draft letter to Allstate, and Attorney/Client Agreement | 0.75 | 112.50 |
| 12/21/2007 | Correspondence - Letter to Allstate Re: Claim and forward records | 0.3 | 45.00 |
| 12/31/2007 | Correspondence - Called Allstate Re: case forward policy to office and called by Ben re: back pain, needs MRI, will advise on authorization, PD not paid, produce policy, back to work light duty | 0.5 | 75.00 |
| 01/02/2008 | Correspondence - Letters to Doctors and Portneuf Re: Request for Benjamin Walton medical records | 0.4 | 60.00 |
| 01/03/2008 | Correspondence - Called by Allstate Re: case did not get fax letter, resend | 0.2 | 30.00 |
| | Balance Due | | \$18,152.50 |

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 01/04/2008 | Correspondence - Rec fax from Allstate, no comparative negligence on Benjamin, pymt made at time of settlment on medical bills | 0.3 | 45.00 |
| 01/11/2008 | Correspondence - Rec letter from Allstate, forwarding check for property damage, and case | 0.3 | 45.00 |
| 01/16/2008 | Correspondence - Rec fax letter from Allstate re: case and med pay policy and send letter to Allstate re: med pay, bills, and Patrick Policy | 0.5 | 75.00 |
| 01/17/2008 | Correspondence - Letter to Allstate re: case and policy request | 0.6 | 90.00 |
| 02/20/2008 | Correspondence - No Third Party Claim; Called Allstate both in treatment will send letter and advise on status | 0.3 | 45.00 |
| 03/17/2008 | Correspondence; Investigation - No Third Party Claim | 0.5 | 75.00 |
| 06/07/2008 | Correspondence - Called Ben, out. total lost wages? | 0.1 | 15.00 |

Balance Due \$18,152.50

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|--------------------|--|--------------|--------------------|
| 07/07/2008 | Correspondence; Document Preparation; Investigation - Work on Draft Letter to Allstate re: treatment and summary of damages | 0.5 | 75.00 |
| 07/09/2008 | Correspondence - Final and Mail letter to Allstate Re: damages (12-120 letter) | 0.5 | 75.00 |
| 08/20/2008 | Correspondence - Allstate called re: Ben injuries, offered \$4,600 | 0.3 | 45.00 |
| 08/26/2008 | Correspondence - Letter to Ben re: case and offer from Allstate | 0.2 | 30.00 |
| 09/11/2008 | Correspondence - Called Idaho Medical Imagine re: bill, make monthly payments of \$10 | 0.2 | 30.00 |
| 09/15/2008 | Correspondence - Letter to Allstate with counteroffer on Ben | 0.5 | 75.00 |
| 09/15/2008 | Correspondence - Letter to Allstate with counteroffer on Ben | 0.5 | 75.00 |
| 09/30/2008 | Correspondence; Document Preparaton - Letter to Ben re: Allstate counteroffer, will begin preparing draft complaint | 0.3 | 45.00 |
| 10/16/2008 | Correspondence - Called Radiology re: bill for \$8 paid | 0.1 | 15.00 |
| Balance Due | | | \$18,152.50 |

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 10/18/2008 | Prepare Draft Complaint | 0.5 | 75.00 |
| 10/24/2008 | Final Complaint | 1 | 150.00 |
| 10/27/2008 | Correspondence - Letter to Clients re: case, forward draft complaint, take several years to settle, et cetera | 0.3 | 45.00 |
| 10/29/2008 | Correspondence - Allstate called re: case, gave best figure, not settle, have surveillance on P's will not send | 0.2 | 30.00 |
| 10/30/2008 | Correspondence - ITLA post re: case | 0.2 | 30.00 |
| 11/05/2008 | Correspondence - Clerk Letter file Summons and Complaint | 0.2 | 30.00 |
| 11/10/2008 | Correspondence - Sheriff Letter to Serve Summons and Complaint | 0.2 | 30.00 |
| 11/18/2008 | Correspondence - Clerk Letter with Return of Service | 0.2 | 30.00 |
| 11/28/2008 | Receive Notice of Appearance for Defendant | 0.1 | 15.00 |
| 12/11/2008 | Correspondence; Document Preparation - Rec Defendant's Answer and Discovery Requests to Plaintiff; BK For Defendant, File Motion to Vacate Discharge and Determine that Stay Does not Apply to PI Claim and Letter to Counsel | 1.5 | 225.00 |

Balance Due \$18,152.50

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|--------------------|---|-------|--------------------|
| 12/22/2008 | Notice of Hearing on Motion to Vacate Automatic Stay | 0.2 | 30.00 |
| 12/23/2008 | Correspondence - Counsel called BK, no claim on personal assets, stipulate to relief | 0.3 | 45.00 |
| 12/29/2008 | Correspondence - Def's Counsel called re: case he will e-mail draft stip, and we will advise | 0.2 | 30.00 |
| 12/31/2008 | Correspondence; Document Preparation; Investigation - Letter to Counsel re: BK and Order for Scheduling Conference, forward stipulation | 0.75 | 112.50 |
| 01/12/2009 | Correspondence; Document Preparation - E-mail to counsel and BK Trustee forwarding Stipulation in BK for signature and draft order | 0.65 | 97.50 |
| 01/14/2009 | ECF Filed Stipulation for Relief from Stay sent in draft Order Approving Stip | 0.3 | 45.00 |
| 01/15/2009 | Correspondence; Document Preparation; Investigation - Called Def's Counsel re: case, order is Ok | 0.2 | 30.00 |
| Balance Due | | | \$18,152.50 |

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|---|-------|--------|
| 01/16/2009 | ECF Filed Certificate of Service on Stipulation | 0.2 | 30.00 |
| 01/21/2009 | Rec ECF Notice of Signed Order Granting Stipulation for Relief in BK | 0.1 | 15.00 |
| 01/23/2009 | Correspondence; Pre-trial Discovery; Plaintiff's First Set of Interrogatories and Requests to Defendant | 0.5 | 75.00 |
| 01/26/2009 | Correspondence - Scheduling Conference, all parties served, BK, stay obtained, not settle, discovery in process; Def's Counsel on phone, first setting June 2010 | 0.4 | 60.00 |
| 02/05/2009 | Correspondence; Pretrial Discovery | 0.2 | 30.00 |
| 02/18/2009 | Correspondence; Document Preparation - Discovery Replies - Letter to Clients re: pretrial conference, set case for trial June 2010, and forward draft discovery replies | 0.7 | 105.00 |
| 02/23/2009 | Correspondence; Document Preparation - Discovery Replies - Work on Draft Discovery Replies | 1 | 150.00 |
| 02/24/2009 | Correspondence - Letter to Cardon Healthcare re: medical lien | 0.2 | 30.00 |

Balance Due \$18,152.50

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 03/05/2009 | Correspondence - Rec Letter from Def's Counsel re: HIPPA release | 0.1 | 15.00 |
| 03/11/2009 | Rec and Review Answers to Interrogatories, Medical Release to Defendant, Letter to Counsel to Supp Discovery and Liability | 0.1 | 15.00 |
| 04/08/2009 | Conference with Clients | 0.5 | 75.00 |
| 04/09/2009 | Correspondence - Letters to West and Idaho Medical Imaging and rec and review letter from Def's counsel; Draft S/J | 0.65 | 97.50 |
| 04/10/2009 | Correspondence; Document Preparation - Motion for Summary Judgment on Liability and Motion to Compel | 0.8 | 120.00 |
| 04/15/2009 | Correspondence - S/J on Liability | 0.2 | 30.00 |
| 04/22/2009 | Rec Def's Reponse and Opposition to S/J | 0.2 | 30.00 |
| 04/28/2009 | Correspondence; Document Preparation - S/J on Liability | 0.8 | 120.00 |
| 04/30/2009 | Correspondence; Document Preparation; Investigation -Summary Judgment on Liability | 1 | 150.00 |
| 05/01/2009 | Work on Summary Judgment Response | 3 | 450.00 |
| 05/07/2009 | Plaintiff's Reply to Defendant's Response and Memorandum in Opposition to Plaintiff's Motion to Compel | 0.5 | 75.00 |

Balance Due \$18,152.50

6/18/2010

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1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|--------------------|--|-------|--------------------|
| 05/10/2009 | Preparation for Court - Hearing on S/J motion | 1 | 150.00 |
| 05/11/2009 | Court Appearance - Hearing on S/J Motion | 1 | 150.00 |
| 05/31/2009 | Research; No Third Party Liability | 1 | 150.00 |
| 06/16/2009 | Supplementation to Record on Failure By Defendant Nancy Patrick to Schedule her Deposition | 0.5 | 75.00 |
| 06/18/2009 | Notice of Deposition for Nancy Patrick | 0.2 | 30.00 |
| 06/24/2009 | Correspondence - Letter to Counsel Re: Hearing Conflict | 0.25 | 37.50 |
| 06/29/2009 | Correspondence - Letter to Clients with Minute Entry and Order, discovery and depositions | 0.25 | 37.50 |
| 07/13/2009 | Call from Counsel re: Deposition and Letter to Clients | 0.35 | 52.50 |
| 07/14/2009 | Correspondence - Letter to Clients re: deposition date and times OK? | 0.2 | 30.00 |
| 08/04/2009 | Correspondence - Letter to Def's Counsel re: Patrick Depo | 0.2 | 30.00 |
| 08/19/2009 | Correspondence - Second Request Letter to Def's Counsel re: Depo | 0.2 | 30.00 |
| 09/21/2009 | Deposition Notice of Nancy Patrick | 0.2 | 30.00 |
| Balance Due | | | \$18,152.50 |

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|--------------------|--|-------|--------------------|
| 09/23/2009 | Preparation for Depositions | 2 | 300.00 |
| 09/24/2009 | Attend Depositions of Plaintiffs and Defendant | 2.5 | 375.00 |
| 11/11/2009 | Read All Depositions | 2.25 | 337.50 |
| 11/12/2009 | Draft Second Summary Judgment | 1 | 150.00 |
| 11/17/2009 | Correspondence - Spoke to Clients re: depositions and signatures | 0.2 | 30.00 |
| 11/18/2009 | Letter to M&M Court Reporting Re: Deposition Changes, Signature Pages and Inquiry as to Patrick Verification and Amended Notice of Hearing | 0.5 | 75.00 |
| 12/18/2009 | Review file and case | 0.2 | 30.00 |
| 12/21/2009 | Court Appearance (Hearing on S/J) | 1 | 150.00 |
| 12/23/2009 | Correspondence; Document Preparation - Letter to Judge with Draft Order Granting Summary Judgment and Letter to Clients re: Mediation | 0.8 | 120.00 |
| 01/05/2010 | Prepare and Final Motion for Costs and Attorney Fees with Memorandum | 1 | 150.00 |
| 01/13/2010 | Correspondence - IME Letter | 0.5 | 75.00 |
| 01/27/2010 | Correspondence - Rec and forward paperwork to clients on IME | 0.15 | 22.50 |
| Balance Due | | | \$18,152.50 |

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 02/01/2010 | Correspondence - IME Info/Allstate | 0.5 | 75.00 |
| 02/02/2010 | Correspondence; Document Preparation - Plaintiff's Witness Disclosure | 0.5 | 75.00 |
| 02/09/2010 | Correspondence - Called Ben went to IME | 0.2 | 30.00 |
| 02/09/2010 | Correspondence; Document Preparation; Investigation - Reply to Attorney Fees | 0.75 | 112.50 |
| 02/09/2010 | Correspondence - Letter on IME and Mediation | 0.25 | 37.50 |
| 02/12/2010 | Reply to Fees | 0.5 | 75.00 |
| 02/12/2010 | Correspondence - Letters to District Judge Brown and Talor | 0.2 | 30.00 |
| 02/12/2010 | Discovery on Damages | 0.6 | 90.00 |
| 02/23/2010 | Correspondence - Rec Letter from Mitchell Brown re: Mediation | 0.2 | 30.00 |
| 02/23/2010 | Correspondence - Called by Judge's Clerk re: Mediation, called Def's Counsel, out left message | 0.2 | 30.00 |
| 03/03/2010 | Correspondence - Mediation Letter to Judge Mitchell Brown with signed agreement | 0.5 | 75.00 |
| 03/05/2010 | Correspondence; Investigation - Read and review IME reports, letter, and mediation | 1 | 150.00 |

Balance Due \$18,152.50

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|---|-------|--------|
| 03/12/2010 | Correspondence - Def's Counsel called re: mediation, reschedule, called Judge's Clerk mediation cancelled and spoke to Def's office, need another copy of Exhibits, hand delivered copy | 0.5 | 75.00 |
| 03/16/2010 | Review Discovery Replies | 0.5 | 75.00 |
| 03/16/2010 | Review Decision | 0.25 | 37.50 |
| 03/16/2010 | Letter to Counsel | 0.5 | 75.00 |
| 03/17/2010 | Correspondence - Def's counsel called mediation set 4-16-10 will send letter | 0.15 | 22.50 |
| 03/18/2010 | Correspondence - Letter to Clients re: mediation and trial | 0.3 | 45.00 |
| 04/14/2010 | Review File | 0.1 | 15.00 |
| 04/16/2010 | Attend Mediation | 1.5 | 225.00 |
| 04/21/2010 | Review pleadings file for trial | 0.6 | 90.00 |
| 04/21/2010 | Letter to Docs on Trial and Witness Schedule | 0.75 | 112.50 |
| 04/21/2010 | Set trial schedule and punch list | 0.75 | 112.50 |
| 04/21/2010 | Correspondence - Letter to Dr. Henry West | 0.25 | 37.50 |
| 04/21/2010 | Draft Motion to Compel | 0.35 | 52.50 |
| 04/21/2010 | Correspondence; Document Preparation - Motion to Compel and Called by Dr. Holmstead | 0.7 | 105.00 |

Balance Due \$18,152.50

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|--------------------|--|-------|--------------------|
| 04/23/2010 | Correspondence; Document Preparation; Investigation - Letter to Def's Counsel re: doctors depositions and schedule and 3 e-mails to Dr. Maynard | 1.5 | 225.00 |
| 04/23/2010 | Correspondence - Spoke to Def's Counsel re: Depos, ER records, will stip into evidence, live testimony | 0.5 | 75.00 |
| 04/26/2010 | Witness Fee (Dr. Simon) | 1 | 27.50 |
| 04/26/2010 | Correspondence - Letter to Def's Counsel with Subpoena for Simon testimony and letter to Dr. David Simon with Subpoena | 0.75 | 112.50 |
| 04/27/2010 | Correspondence - Letter to Dr. Williamson/Idaho Medical Imaging, obtain copy of MRI Disc | 0.5 | 75.00 |
| 04/28/2010 | Correspondence - Talk to Dr. Maynard | 0.2 | 30.00 |
| 04/28/2010 | Work on Deposition Outline for Docs | 0.9 | 135.00 |
| 04/28/2010 | Deposition Notice for Dr. Williamson | 0.4 | 60.00 |
| 04/29/2010 | Prep for Depositions | 0.5 | 75.00 |
| 04/29/2010 | Review all Files for Depositions | 1 | 150.00 |
| 04/29/2010 | Add Exhibits 5-7 to Exhibit List | 0.5 | 75.00 |
| 04/29/2010 | Calls and E-mails on Depositions | 0.35 | 52.50 |
| 04/29/2010 | Review O/J and New Discovery Replies | 0.5 | 50.00 |
| Balance Due | | | \$18,152.50 |

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 04/30/2010 | Review Docs and Files for Depositions and Finish Depo outline | 0.4 | 60.00 |
| 04/30/2010 | Called by Def's Counsel 3 times and called doc, court reporter depo, and e-mail | 0.5 | 75.00 |
| 05/03/2010 | Two Conversations with Def's Counsel | 0.2 | 30.00 |
| 05/03/2010 | Correspondence - Letter to Def's Counsel | 0.15 | 22.50 |
| 05/03/2010 | Draft Pre-Trial Statement | 0.5 | 75.00 |
| 05/03/2010 | Draft First Rough of Jury Instructions | 0.5 | 75.00 |
| 05/04/2010 | Work on Pre-Trial Statement | 0.35 | 52.50 |
| 05/04/2010 | Work on Trial Exhibit List | 0.35 | 52.50 |
| 05/04/2010 | Work on Jury Instructions | 0.7 | 105.00 |
| 05/08/2010 | Research and Draft Motion in Limine | 1 | 150.00 |
| 05/08/2010 | Correspondence - Letter on Medical Exhibits | 0.2 | 30.00 |
| 05/10/2010 | Bonneville Sheriff Service Fees (Serve Subpoena on Dr. Simon) | 1 | 20.00 |
| 05/11/2010 | Correspondence - Letter to Henry West with prepayment for testimony and work on Plaintiff's Pre-Trial Memo | 0.7 | 105.00 |
| 05/11/2010 | Deposition Costs (Dr. Henry West Witness Fee) | 1 | 400.00 |

Balance Due \$18,152.50

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|--------------------|---|-------|--------------------|
| 05/13/2010 | Get MRI Disc, print pics, Exhibits, Plaintiff's Pre-Trial Memorandum, Joint or file separately? | 2 | 300.00 |
| 05/14/2010 | Stipulated Pre-Trial Memorandum and work on Plaintiff's Damages Summaries | 1.75 | 262.50 |
| 05/15/2010 | Research Jury Voir Dire Questions | 1 | 150.00 |
| 05/15/2010 | Finalize Requested Voir Dire Questions | 0.75 | 112.50 |
| 05/15/2010 | Work on Jury Instructions and Esp No. 7 | 1.25 | 187.50 |
| 05/15/2010 | Finalize Jury Instructions | 0.5 | 75.00 |
| 05/17/2010 | Preparation for Court | 0.75 | 112.50 |
| 05/17/2010 | Travel to and from Court | 0.2 | 30.00 |
| 05/17/2010 | Court Appearance | 0.3 | 45.00 |
| 05/17/2010 | Subpoenas | 0.2 | 30.00 |
| 05/18/2010 | Rec Return of Service from Sheriff on Simon Subpoena | 0.1 | 15.00 |
| 05/19/2010 | Research | 0.15 | 22.50 |
| 05/20/2010 | Work on Order Granting Motion in Limine | 0.75 | 112.50 |
| 05/21/2010 | Trial Prep | 0.4 | 60.00 |
| 05/24/2010 | Preparation for Court | 1.25 | 187.50 |
| 05/24/2010 | Correspondence - Letter to Portnuef re: future care and treatment costs for Ben | 0.5 | 75.00 |
| 05/25/2010 | Prep for Doctor West | 1.25 | 187.50 |
| Balance Due | | | \$18,152.50 |

6/18/2010

BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|--|-------|--------|
| 05/25/2010 | Meet with Dr. West | 0.5 | 75.00 |
| 05/27/2010 | Read All Exhibits Again and redact all ins and chiro referral | 1.25 | 187.50 |
| 05/27/2010 | Work on Case Outline for Trial | 0.5 | 75.00 |
| 05/27/2010 | Preparation for Court | 1.75 | 262.50 |
| 05/28/2010 | Work on Exhibits | 0.7 | 105.00 |
| 05/28/2010 | Letter to Witnesses | 0.2 | 30.00 |
| 05/28/2010 | Call Def's Attorney | 0.2 | 30.00 |
| 05/28/2010 | Rec Letter from Def's Att | 0.2 | 30.00 |
| 05/28/2010 | Correspondence; Document Preparation - Letter to Def's Counsel on Order Granting Limine, Redacted Exhibits, and Research | 1.5 | 225.00 |
| 05/29/2010 | Work on Outline, Review Material | 0.5 | 75.00 |
| 05/29/2010 | PRMC Letter | 0.25 | 37.50 |
| 05/31/2010 | Work on Exhibits and Exhibit List | 0.35 | 52.50 |
| 05/31/2010 | Work on Voir Dire Q's | 0.5 | 75.00 |
| 05/31/2010 | Work on Dr. Simon Outline for Trial | 0.7 | 105.00 |
| 05/31/2010 | Work on Outline for Opening Statements | 1.25 | 187.50 |
| 05/31/2010 | Review Juror Profiles | 1 | 150.00 |
| 06/01/2010 | Final Exhibits | 0.5 | 75.00 |
| 06/01/2010 | Call PRMC, Exhibit 148 (future est cost of care for Ben, fax, visit et cetera) | 1 | 150.00 |

Balance Due \$18,152.50

6/18/2010

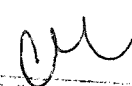
BEN WALTON
1771 S. 2ND AVENUE
POCATELLO, IDAHO 83201

In Reference To: Bennett and Walton v. Patrick
Our File No.: 07-119
Our Federal Tax ID #82-0356054

| Date | Description | Hours | Amount |
|------------|---|-------|--------|
| 06/01/2010 | Preparation for Court - Meet with Witnesses | 1.5 | 225.00 |
| 06/01/2010 | Work on Outline and Opening Statements | 1 | 150.00 |
| 06/02/2010 | Preparation for Court; Court Appearance; Trial Day 1 | 6.5 | 975.00 |
| 06/03/2010 | Preparation for Court; Court Appearance; Trial Day 2 | 6.25 | 937.50 |
| 06/04/2010 | Trial Day 3 | 1.5 | 225.00 |
| 06/04/2010 | Wait for Verdict | 0.5 | 75.00 |
| 06/04/2010 | Attend Court; Verdict by Jury | 0.25 | 37.50 |
| 06/07/2010 | Correspondence - Called by West Re; Trial | 0.15 | 22.50 |
| 06/10/2010 | Correspondence - Letter to Clients | 0.35 | 52.50 |
| | fowarding Judgment on Verdict & Minute Entry | | |
| 06/11/2010 | Work on Motion for Additur and Fees | 1.75 | 262.50 |
| 06/15/2010 | Work on Additur | 1 | 150.00 |
| 06/16/2010 | Work on Costs Bill Ben | 1 | 150.00 |
| 06/17/2010 | Finalize Motions | 1 | 150.00 |

Balance Due \$18,152.50

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
109 North Arthur - 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Idaho State Bar #6078

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2008 JUL 21 PM 4:02
BY 
DEPUTY CLERK

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|---|---|------------------------------|
| MATHEW R. BENNETT and BENJAMIN L. WALTON, |) | |
| |) | |
| Plaintiffs, |) | Case No. CV-08-4528-PI |
| |) | |
| vs. |) | DEFENDANT'S MOTION FOR COSTS |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |

COMES NOW the Defendant, Nancy Patrick, by and through her counsel of record, Merrill & Merrill, Chartered, and moves this Court for an award of her costs pursuant to I.R.C.P. Rules 54 and 68. This Motion is supported by the Memorandum of Costs and Affidavit of Brendon C. Taylor filed herewith and the Judgment on the Verdict of this Court.

I. Defendant is Entitled to Costs as the Prevailing Party Pursuant to I.R.C.P. Rule 54(d)(1)(B).

There can be no doubt that the Defendant is the prevailing party in this case. Under I.R.C.P., Rule 54(d)(1), the Court is to determine the prevailing party when considering motions for costs. In determining the prevailing party, the Court, "In its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties."¹

At trial, Plaintiff Benjamin Walton asked the jury to award him at minimum the amount of \$41,252.72. Defendant asked the jury to award Plaintiff Walton approximately \$7,000. The jury awarded Plaintiff Walton \$10,030.92. Furthermore, there was no dispute as to the past medical bills of \$3,030.92. There was dispute as to the additional \$7,021.80

¹I.R.C.P., Rule 54(d)(1)(B).

in future medical bills, of which the jury awarded \$2,000 (an amount in accordance with recommendations made by Dr. Simon, which had not been claimed by Plaintiff Walton until approximately two weeks before trial). Defendant further disputed Plaintiff Walton's lost wage claim of \$1,200, which the jury declined to award. Finally, Plaintiff asked for \$30,000 in pain and suffering. Defendant suggested approximately \$3,000-\$4,000, and the jury awarded \$5,000. The jury's awards, individually and in total, were clearly much closer to the amounts requested by the Defendant. The total jury award was approximately \$3,000 above Defendant's recommendation, but more than \$31,000 below Plaintiff Walton's request.

At trial, Plaintiff Bennett asked the jury to award him \$30,734.47. Defendant asked the jury to award Plaintiff Bennett approximately \$2,878.47 to \$4,078.47. The jury awarded Plaintiff Bennett \$3,978.7. There was no dispute as to \$1,878.47 of Plaintiff Bennett's past medical expenses. Plaintiff Bennett asked for lost wages in the amount of \$2,600 from the date of the accident. Defendant acknowledged approximately one week of lost income in the \$600-\$700 range, which Defendant asked the jury to assign to the Plaintiff because of the second accident at work. The jury awarded Plaintiff Bennett \$600 for lost earnings. Plaintiff Bennett also added a claim for \$168.00 in past chiropractic care, not in his original complaint or 12-120 demand letter, which Defendant disputed. The jury gave Plaintiff Bennett no additional past medical expenses. Plaintiff Bennett asked for an additional \$5,088.00 for future medical bills, that included additional chiropractic care not previously requested at any time before the close of discovery. Plaintiff Bennett's claims for future medical expenses had always previously been \$2,500 for over-the-counter pain medications. Notwithstanding this new request for additional chiropractic care in the future, Defendant asked that Plaintiff Bennett receive no additional medical care in the future, and the jury agreed, awarding him no future care. Finally, Plaintiff Bennett asked for \$21,000 in pain and suffering. Defendant asked the jury to award him between \$1,000 and \$1,500 in pain and suffering. The Jury awarded \$1,500. Clearly, the jury's individual and total awards are nearly in line with what Defendant requested, and more than \$25,000 lower than the \$30,734.47 Plaintiff Bennett asked them to award.

As stated above, when this Court considers the amount of the jury verdict and judgment rendered therefrom, it is clear that the Plaintiffs' awards were very near the amount recommended by the Defendant, and significantly lower than the amounts requested by the Plaintiffs. Thus, Defendant should be determined to be the prevailing party and awarded her costs incurred in this matter as set forth below.

II. Defendant is the Prevailing Party as to Plaintiff Bennett Pursuant to I.R.C.P. Rule 68.

Defendant made two Offers of Judgment to Plaintiff Bennett. On April 29, 2010, Defendant made an Offer of Judgment to Plaintiff Bennett in the amount of \$3,432.00. on Tuesday, May 18, 2010 (15 days before trial began on Wednesday, June 2, 2010), Defendant made an Offer of Judgment to Plaintiff Bennett in the amount of \$4,432.00. The 5-18-10 offer was served via facsimile, pursuant to I.R.C.P. Rule 5(b), which allows service upon counsel by facsimile and no other rule requires the addition of days to service time when service is made via facsimile. Thus, Plaintiff Bennett bears the burden of beating Defendant's offer of judgment.

Pursuant to the I.R.C.P. Rule 68, Plaintiff Bennett is given the benefit of an adjusted award in assessing the offer. The rule regarding the "adjusted award" provision of Rule 68 is as follows:

(b) In cases involving claims for monetary damages, any costs under Rule 54(d)(1) awarded against the offeree must be based upon a comparison of the offer and the "adjusted award." The adjusted award is defined as (1) the verdict in addition to (2) the offeree's costs under Rule 54(d)(1) incurred before service of the offer of judgment and (3) any attorney fees under Rule 54(e)(1) incurred before service of the offer of judgment. Provided, in contingent fee cases where attorney fees are awardable under Rule 54(e)(1), the court will pro rate the offeree's attorney fees to determine the amount incurred before the offer of judgment in reaching the adjusted award.²

Plaintiff Bennett has set forth his proposed costs in his post-trial filings. However, for the purposes of Rule 68, the only costs considered are those incurred pursuant to Rule 54(d)(1) prior to the offer being made on May 18, 2010. I.R.C.P. 54(d)(1) outlines the following costs:

C) Costs as a Matter of Right. When costs are awarded to a party, such party shall be entitled to the following costs, actually paid, as a matter of right:

1. Court filing fees.
2. Actual fees for service of any pleading or document in the action whether served by a public officer or other person.
3. Witness fees of \$20.00 per day for each day in which a witness, other than a party or expert, testifies at a deposition or in the trial of an action.
4. Travel expenses of witnesses who travel by private transportation, other than a party, who testify in the trial of an action, computed at the rate of \$.30 per mile, one way, from the place of residence, whether it be

²I.R.C.P. Rule 68.

within or without the state of Idaho; travel expenses of witnesses who travel other than by private transportation, other than a party, computed as the actual travel expenses of the witness not to exceed \$.30 per mile, one way, from the place of residence of the witness, whether it be within or without the state of Idaho.

5. Expenses or charges of certified copies of documents admitted as evidence in a hearing or the trial of an action.
6. Reasonable costs of the preparation of models, maps, pictures, photographs, or other exhibits admitted in evidence as exhibits in a hearing or trial of an action, but not to exceed the sum of \$500 for all of such exhibits of each party.
7. Cost of all bond premiums.
8. Reasonable expert witness fees for an expert who testifies at a deposition or at a trial of an action not to exceed the sum of \$2,000 for each expert witness for all appearances.
9. Charges for reporting and transcribing of a deposition taken in preparation for trial of an action, whether or not read into evidence in the trial of an action.
10. Charges for one (1) copy of any deposition taken by any of the parties to the action in preparation for trial of the action.

(D) Discretionary Costs. Additional items of cost not enumerated in, or in an amount in excess of that listed in subparagraph (C), may be allowed upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party. The trial court, in ruling upon objections to such discretionary costs contained in the memorandum of costs, shall make express findings as to why such specific item of discretionary cost should or should not be allowed. In the absence of any objection to such an item of discretionary costs, the court may disallow on its own motion any such items of discretionary costs and shall make express findings supporting such disallowance.³

The costs allowable under Rule 54(d)(1) are to be added to the verdict amount and then compared with the offer of judgment. Rule 68 also allows attorneys fees incurred prior to the offer to be considered in the adjusted award, but Defendant denies that Plaintiff Bennett is entitled to any attorney fees, which will be discussed further below and in greater detail in Defendant's responses to Plaintiff's post-trial motions in a timely manner. For the purposes of the Court's determination under Rule 68, Defendant suggests the following costs be added to the verdict to come up with the "adjusted award:"

- | | | |
|----|------------------------------|----------|
| 1. | Filing Fee ($\frac{1}{4}$) | \$44.00 |
| 2. | Service Fee | \$20.00* |

³I.R.C.P. 54(d)(1)

| | | |
|----|---|------------------|
| 3. | Nancy Patrick Deposition | \$98.91* |
| 4. | <u>Matt Bennett's Deposition (copy expense)</u> | <u>\$118.08*</u> |
| | TOTAL | \$280.99 |

* These costs still need to be verified by copies of invoices or other proof of the cost.

The other costs outlined by Plaintiff Bennett were trial expenses and/or not incurred pursuant to Rule 54(d)(1). The IME travel/reimbursement expense, Defendant had negotiated to pay separately, and is not part of the standard Rule 54(d)(1) costs. The Trial expenses for experts should not be considered by the Court for the purposes of the offer made 15 days before trial. Furthermore, Defendant and Plaintiff had an agreement as to the admissibility of all exhibits and the trial testimony of Dr. Simon. Thus, the costs for production of medical bills and records is not reasonable, nor necessary expenses nor are they otherwise certified for admission as exhibits as considered by Rule 54(d)(1).

Adding the total costs to Mr. Bennett's verdict amount, the adjusted award is \$4,259.46. That is still less than the Offer of Judgment amount of \$4,432.00. Thus, Defendant must be deemed the prevailing party as to Plaintiff Bennett and awarded all of her costs incurred after May 18, 2010.

III. The Court Should Not Consider Plaintiff's Claims for Attorney's Fees under I.C. § 12-120(4).

Each Plaintiff's claim for attorneys fees under Idaho Code § 12-120(4) should not be considered because each have failed to comply with the statute. Defendant shall further, and in greater detail, respond to Plaintiffs' Motion for Costs and Fees in the time allowed under the rules. However, for the purposes of this Motion, it is important to note the Defendant's position that Plaintiffs are not entitled to attorneys fees.

Plaintiff quoted a large section of Idaho Code § 12-120(4), but omitted the critical last paragraph:

If the plaintiff includes in the complaint filed to commence the action, or in evidence offered at trial, a different alleged injury or a significant new item of damage not set forth in the statement of claim, the plaintiff shall be deemed to have waived any entitlement to attorneys fees under this section.⁴

⁴Idaho Code § 12-120(4).

Plaintiff alleged significant new and larger damage claims at trial. In their demand letter, each plaintiff advised Defendant's insurer that he had completed care under Dr. West and the only future care was for over-the-counter pain reliever. Each stated his future medical bills as \$2,500 for ongoing over-the-counter pain reliever.

At trial, Plaintiff Walton asked for over \$7,000 in future medical specials, including over \$2,000 for physical therapy, muscle relaxers and trigger point injections. This amount alone was greater than 2/3 of Plaintiff Walton's prior medical expenses, and of a nature completely different than what had been discussed in the 12-120 letter. Furthermore, the other future medical expenses nearly doubled, from \$2,500 at all times until a few weeks before trial, to \$4,972.80 at trial. This increase of greater than \$4,500 is a significant and new claim that requires the Court to deem Plaintiff Walton's 12-120 claim waived.

At trial, Plaintiff Bennett asked the jury to award him for a new exacerbation of his old injury. However, Dr. West testified that the new injury was in Mr. Bennett's sciatic area, and that his earlier treatment of Mr. Bennett was not recorded as being in his sciatic region. This new bill was nearly 10% of the admitted prior medical bills. More importantly, however, Plaintiff Bennett claimed he was not released from Dr. West's care, but would continue to need treatment on a "prn" basis, or as his condition warranted. This was a significant departure from Dr. West's earlier record releasing him from care. Indeed, Plaintiff Bennett argued to the jury that he would need future chiropractic care, and that his future medical expenses would be \$5,088. This was more than double the \$2,500 future special damages asserted in the 12-120 letter and at all times until a few weeks before trial. Thus, these significant new claims of past and future medical specials, added more than \$2,750, to his earlier claim of \$4,437.71 in medical specials past and future. Thus, Mr. Bennett has waived any claim for attorney fees under Idaho Code § 12-120(4).

IV. Defendant is Entitled to Her Costs as Follows

Defendant's costs are set forth in the accompanying Memorandum of Costs. Likewise, pursuant to I.R.C.P. Rule 54(d)(1)(B) this Court should find that the Defendant is the prevailing party in this matter. As the prevailing party, the Defendant is entitled to all of her costs as a matter of right. Those costs are set forth in the accompanying Memorandum of Costs, including mandatory and discretionary costs.

WHEREFORE, Defendant moves for the Court to find her to be the prevailing party and award her costs as requested herein.

ORAL ARGUMENT IS REQUESTED.

DATED this 21st day of June, 2010.

MERRILL & MERRILL, CHARTERED



Brendon C. Taylor
Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Brendon C. Taylor, the undersigned, one of the attorneys for the Defendant, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Defendant's Motion for Costs was this 21st day of June, 2010, served upon the following in the manner indicated below:

Charles Johnson
JOHNSON OLSON, CHARTERED
P.O. Box 1725
Pocatello, Idaho 83204-1725

☐ U.S. Mail
☒ Hand Delivery
☐ Overnight Delivery
☐ Telefax



Brendon C. Taylor

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
 109 North Arthur - 5th Floor
 P.O. Box 991
 Pocatello, ID 83204-0991
 (208) 232-2286
 (208) 232-2499 Telefax
 Idaho State Bar #6078

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 2010 JUN 21 PM 4:52
 DEPUTY CLERK

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|---|---|----------------------------------|
| MATHEW R. BENNETT and BENJAMIN L. WALTON, |) | |
| |) | |
| Plaintiffs, |) | Case No. CV-08-4528-PI |
| |) | |
| vs. |) | DEFENDANT'S MEMORANDUM FOR COSTS |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |

COMES NOW the Defendant, Nancy Patrick, by and through her counsel of record, Merrill & Merrill, Chartered, and moves this Court for an award of her costs pursuant to I.R.C.P. Rules 54 and 68.

Pursuant to IRCP 54(d)(1), the jury verdict rendered in this matter on June 4, 2010, and the judgment was entered on June 7, 2010, Defendant claims the following costs as the prevailing party:

I. COSTS AS A MATTER OF RIGHT UNDER IRCP 54(d)(1)(C). The following are non-discretionary costs actually paid by the Defendants in defending this action.

- | | | |
|----|---|------------|
| 1. | Court filing fee, Twin Falls County Clerk | \$58.00 |
| 2. | Expert Witness Fee for Dr. David Simon, Trial Testimony | \$2,000.00 |
| 3. | Deposition Copy Fee for Nancy Patrick (estimated)* | \$75.00 |
| 4. | Deposition Reporting/Transcribing Fee for Mathew Bennett Deposition . | \$250.02 |
| 5. | Deposition Reporting/Transcribing Fee for Benjamin Walton Deposition | \$261.77 |

TOTAL Non-discretionary Costs **\$2,644.79**


* As of the date of this Memorandum, Defendant has requested a replacement invoice for Nancy Patrick's Deposition copy fee.

II. DISCRETIONARY COSTS SOUGHT UNDER IRCP 54(d)(1)(D). The following are discretionary costs which were necessary and exceptional costs reasonably incurred in defending against Plaintiff's claims, which, in the interest of justice, should be assessed against the Plaintiff.

| | | |
|----|---|--------------------|
| 1. | Independent Medical Examinations of Mr. Bennett by Dr. Simon | \$2,660.00 |
| 2. | Independent Medical Examinations of Mr. Walton by Dr. Simon | \$2,445.00 |
| 3. | Expert Witness Fees for Dr. David Simon (\$3,750.00 - \$2,000.00) | \$1,750.00 |
| 4. | Travel/Lodging Expenses of Defendant to Attend Trial* | \$916.57 |
| 5. | Car rental for Defendant to Attend Deposition | \$101.23 |
| | TOTAL Discretionary Costs | \$7,872.80 |
| | TOTAL COSTS REQUESTED PURSUANT TO IRCP 54(d)(1) | \$10,517.59 |

DATED this 21st day of June, 2010.

MERRILL & MERRILL, CHARTERED

By 
 Brendon C. Taylor
 Attorneys for Defendant

STATE OF IDAHO)
 : ss
COUNTY OF Bannock)

BRENDON C. TAYLOR, being first duly sworn, deposes and states:

1. I am one of the attorneys representing the Defendant in the above-captioned case, and as such I have knowledge of the amounts of the costs and the circumstances to their being incurred.

2. I have reviewed the foregoing Defendants' Memorandum of Costs. The amounts recited therein are true and correct and were reasonably and necessarily incurred in the defense of this action. To the best of my knowledge and belief, the costs shown herein are in compliance with the Idaho Rules of Civil Procedure.

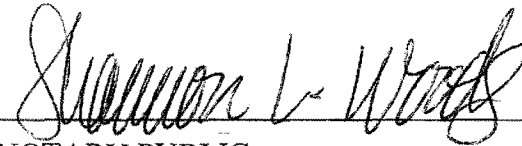
DATED this 21st day of June, 2010.



Brendon C. Taylor

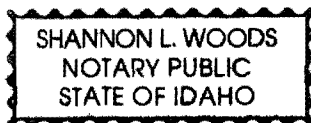
STATE OF IDAHO)
 : ss
County of BANNOCK)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 21st day of June, 2010.



NOTARY PUBLIC
Residing In: Pocatello
My Commission Expires: 4/12/10

(SEAL)



CERTIFICATE OF SERVICE

I, Brendon C. Taylor, the undersigned, one of the attorneys for the Defendant, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Defendant's Memorandum of Costs was this 25th day of June, 2010, served upon the following in the manner indicated below:

Charles Johnson
JOHNSON OLSON, CHARTERED
P.O. Box 1725
Pocatello, Idaho 83204-1725

☐ U.S. Mail
☒ Hand Delivery
☐ Overnight Delivery
☐ Telefax



Brendon C. Taylor

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
109 North Arthur - 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Idaho State Bar #6078

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2010 JUN 21 PM 1:52
DEPUTY CLERK

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|---|---|------------------------|
| MATHEW R. BENNETT and BENJAMIN L. WALTON, |) | |
| |) | |
| Plaintiffs, |) | Case No. CV-08-4528-PI |
| |) | |
| vs. |) | DEFENDANT'S MOTION FOR |
| |) | REDUCTION TO JUDGMENT |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |

COMES NOW the Defendant, Nancy Patrick, by and through her counsel of record, Merrill & Merrill, Chartered, and moves this Court for a reduction on the Judgment. This Motion is supported by the Motion for Costs, Memorandum of Costs and Affidavit of Brendon C. Taylor filed herewith and the Judgment on the Verdict of this Court, and the Pleadings on File.

Plaintiff Mathew Bennett received the benefit of payment of \$172.00 being paid by Defendant/Plaintiff's insurer for medical bills he claimed in the lawsuit to Mountain View Family Medicine.

Plaintiff Benjamin Walton received the benefit of payment of \$1,000.00 to Portneuf Medical Center (\$917.00) and Pocatello Radiology (\$83.00) being paid by his/Defendant's insurer for medical bills he claimed in the lawsuit.

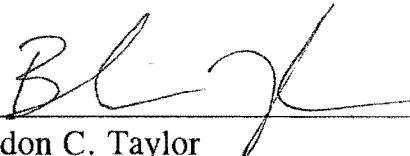
These Plaintiffs' judgments should be reduced accordingly.

WHEREFORE, Defendant moves for the Court to find her to be the prevailing party and award her costs as requested herein.

ORAL ARGUMENT IS REQUESTED.

DATED this 21st day of June, 2010.

MERRILL & MERRILL, CHARTERED




Brendon C. Taylor
Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Brendon C. Taylor, the undersigned, one of the attorneys for the Defendant, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Defendant's Motion for Reduction to Judgment was this 21st day of June, 2010, served upon the following in the manner indicated below:

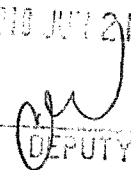
Charles Johnson
JOHNSON OLSON, CHARTERED
P.O. Box 1725
Pocatello, Idaho 83204-1725

☐ U.S. Mail
☒ Hand Delivery
☐ Overnight Delivery
☒ Telefax
BT



Brendon C. Taylor

Brendon C. Taylor
Jared A. Steadman
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(208) 232-2286
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ISB #6078 (BCT), #7804 (JAS)

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2010 JUL 21 PM 4:52
BY  DEPUTY CLERK

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|-----------------------|---|--------------------------------|
| MATHEW R. BENNETT and |) | |
| BENJAMIN L. WALTON, |) | |
| |) | Case No. CV-08-4528-OC |
| Plaintiffs, |) | |
| |) | AFFIDAVIT OF BRENDON C. |
| vs. |) | TAYLOR |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

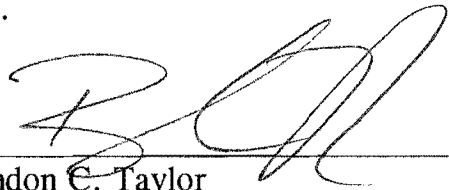
STATE OF IDAHO)
 :SS
County of Bannock)

Brendon Taylor, being first duly sworn, deposes and states:

1. I am one of the attorneys for the Defendant in the above entitled action and as such I make the following statements of my own personal knowledge and belief.

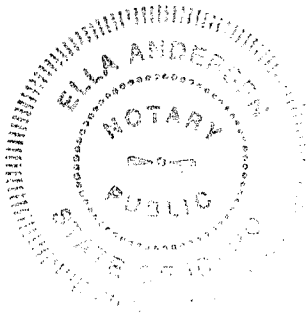
2. Plaintiff's demand letter of July 9, 2008, included statements of damages, of which true and correct copies are attached hereto as Exhibit A.
3. Plaintiff's damage statements presented through evidence and to the jury in closing arguments are attached hereto as Exhibit B.
4. A true and correct copy of statements of amounts paid by Allstate for Plaintiff's medical bills is attached hereto as Exhibit C.
5. I served a copy of Defendant's Offer of Judgment to Plaintiff Bennett through his counsel via facsimile on May 18, 2010, 15 days before trial. A true and correct copy of that and my earlier offer of judgment are attached hereto as Exhibit D.
6. Further, your affiant saith naught.

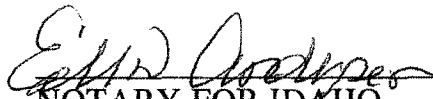
DATED this 21st day of June, 2010.


Brendon C. Taylor

SUBSCRIBED AND SWORN to this 21st day of June, 2010.

(SEAL)




NOTARY FOR IDAHO
Residence: Bannock
Commission expires: 1-18-2014

CERTIFICATE OF SERVICE

I, Brendon C. Taylor, the undersigned, one of the attorneys for the Defendants, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing document was this 2nd day of December, 2010, served upon the following in the manner indicated below:

Charles Johnson
JOHNSON OLSON CHARTERED
PO Box 1725
Pocatello, Idaho 83204-1725

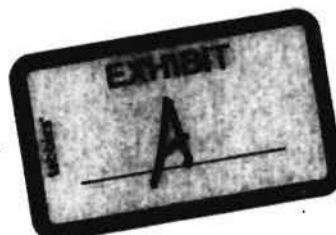
☐ U.S. Mail
☒ Hand Delivery
☐ Overnight Delivery
☐ Telefax


Brendon C. Taylor

**MATTHEW R. BENNETT
DAMAGES SUMMARY**

MEDICAL BILLS

| | |
|---|--------------------|
| Portneuf Medical Center 10/18/08 | \$291.00 |
| Portneuf Medical Center 11/20/08 | \$631.84 |
| Portneuf Medical Center Physical Therapy 11/26/08 through 11/27/07 | \$316.00 |
| Portneuf Medical Center Physical Therapy 12/06/07 | \$116.00 |
| Mountain View Family Medicine (Dr. Evan Holmstead) 10/30/07 and 11/29/07 | \$191.60 |
| West Chiropractic (Dr. Henry West) | \$310.00 |
| Shopko Pharmacy Prescriptions 10/18/07 through 04/21/08 | \$81.27 |
| TOTAL MEDICAL | \$1,937.71 |
| Future Medical Bills; estimated to be \$20.00 a month for pain medication for rest of life expectancy plus future medical care as necessary | \$2,500.00 |
| LOST WAGES | |
| Lost Wages of \$26.00, an hour, for the date accident for two and a half weeks at eight hours a day | \$2,600.00 |
| PAIN AND SUFFERING | |
| Pain and Suffering (estimated three times bills) | \$13,500.00 |
| TOTAL | \$20,600.00 |



| BENJAMIN L. WALTON DAMAGES SUMMARY | |
|---|--------------------|
| MEDICAL BILLS | |
| Portneuf Medical Center 10/18/07 | \$917.00 |
| Primary Care Specialists (Dr. Richard Maynard) 10/26/07 and 11/09/07 | \$202.42 |
| West Chiropractic 11/21/07 through 05/07/08 | \$703.00 |
| Idaho Medical Imaging 02/19/08 (MRI) | \$1,170.50 |
| TOTAL MEDICAL | \$2,992.92 |
| Future Medical Bills; estimated to be \$20.00 a month for pain medication for rest of life expectancy plus future medical care as necessary | \$2,500.00 |
| LOST WAGES | |
| Lost Wages for one week from the date accident | \$1,200.00 |
| PAIN AND SUFFERING | |
| Pain and Suffering (estimated three times medical bills) | \$16,500.00 |
| TOTAL | \$23,200.00 |

**MATTHEW R. BENNETT
DAMAGES SUMMARY**

MEDICAL BILLS

| | |
|--|--------------------|
| Portneuf Medical Center 10/18/07 (Exhibit 11) | \$291.00 |
| Portneuf Medical Center 11/20/07 (Exhibit 27) | \$631.84 |
| Portneuf Medical Center Physical Therapy 11/26/07 through 11/27/07 (Exhibit 39) | \$316.00 |
| Portneuf Medical Center Physical Therapy 12/06/07 (Exhibit 41) | \$116.00 |
| Mountain View Family Medicine (Dr. Evan Holmstead) 10/30/07 and 11/29/07 (Exhibit 55) | \$191.60 |
| West Chiropractic (Dr. Henry West) 04/14/08 through 04/16/08 (Exhibit 66) | \$310.00 |
| Shopko Pharmacy Prescriptions 10/18/07 through 04/21/08 (Exhibit 71) | \$22.03 |
| TOTAL PAST MEDICAL (not disputed) | \$1,878.47 |
| West Chiropractic (Dr. Henry West) 02/05/10 through 02/08/10 (Exhibit 69) *Subsequent Treatment | \$168.00 |
| <i>ms. Walton said family uses together</i> | |
| Future Estimated Medical Bills; estimated to be \$20.00 a month for pain medication, medical or chiropractic care as necessary; $\$20 \times 12 \text{ months} = \240×21.20 | \$5,088.00 |
| TOTAL MEDICAL | \$7,134.47 |
| LOST WAGES | |
| Lost Wages of \$26.00, an hour, for the date accident for two and a half weeks at eight hours a day (100 hours); with no increase for exercises and treatment | \$2,600.00 |
| PAIN AND SUFFERING | |
| Pain and Suffering (estimated three times bills) or Past pain and suffering of one dollar per hour for six months (or 12 hours x 180 days) equals \$2,160.00, plus Pain and suffering of twenty cents per hour for two years at discounted life expectancy of 21.20 years ($.20 \times 12 \times 365 \times 21.20$) equals \$18,571.20; For a total of \$21,731.20 | \$21,000.00 |
| TOTAL DAMAGES | \$30,734.47 |

EXHIBIT

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**BENJAMIN L. WALTON
DAMAGES SUMMARY**

MEDICAL BILLS

| | |
|--|--------------------|
| Portneuf Medical Center 10/18/07 (Exhibit 90) | \$917.00 |
| Primary Care Specialists (Dr. Richard Maynard) 10/26/07 and 11/09/07 (Exhibit 104) | \$202.42 |
| West Chiropractic 11/21/07 through 05/07/08 (Exhibits 123-124) | \$703.00 |
| Idaho Medical Imaging 02/19/08 (MRI) (Exhibit 133) | \$1,170.50 |
| Radiology Physicians of Idaho (MRI diagnostic) (Exhibit 91) | \$38.00 |
| TOTAL PAST MEDICAL (not disputed) | \$3,030.92 |
| Future pain medication estimated to be \$20.00 a month for life expectancy; or $\$20 \times 12 \text{ months} \times 20.72 = \$4,972.80$ | \$4,972.80 |
| Plus future medical care necessary per Dr. David Simon: Physical Therapy (evaluation \$132 and 12 sessions at \$116 each (see Bennett Exhibits 39 and 41) \$1,524.00 Muscle Relaxers (included in pain medication above) Trigger Point Injections ($\$175.00 \times 3 \text{ injections}$) \$525.00 | \$2,049.00 |
| TOTAL MEDICAL | \$10,052.72 |
| LOST WAGES | |
| Lost Wages for one week from the date accident (\$30 hr); with no increase for exercises and treatment | \$1,200.00 |
| PAIN AND SUFFERING | |
| Pain and Suffering (est three times medical bills) or Past pain and suffering of one dollar per hour for six months (or 12 hours x 180 days) equals \$2,160.00, plus future pain and suffering of thirty cents per hour for discounted life expectancy factor of 20.72 ($12 \times 365 \times$ $.30 \times 20.72 = \$27,226.08$; for a total of \$29,386.08 | \$30,000.00 |
| TOTAL DAMAGES | \$41,252.72 |

June 21, 2010

Medical Bill - Loss History

Injured Person: Mr. BENJAMIN WALTON
Policyholder: Mr. BENJAMIN WALTON
Contact Person:
Total Loss Paid: \$ 1,000.00

Claim Number: 000105271225
Injured Person Id: 01
Date of Loss: 10/18/07
Co-Payment Amount: \$ 0.00

| Date Received | Date Paid | Provider | Payee/Payor | Date From | Date Thru | Check Number | Billed Amount | Paid Amount* | Benefit Claimed** |
|---------------|-----------|---------------------------|---------------------------|-----------|-----------|--------------|---------------|--------------|-------------------|
| 11/23/07 | 02/15/08 | PORTNEUF MEDICAL CENTER | PORTNEUF MEDICAL CENTER | 10/18/07 | 10/18/07 | 620123163 | \$ 917.00 | \$ 917.00 | MD |
| 01/23/08 | 05/06/08 | POCATELLO RADIOLOGY ASSOC | POCATELLO RADIOLOGY ASSOC | 10/18/07 | 10/18/07 | 620172158 | \$ 91.00 | \$ 83.00 | MD |

*Payment Amount Does Not Include Interest.

**Benefit Claimed

MD: Medical; WL: Wage Loss; RS: Replacement Services; FN: Funeral; SV: Survivor; ML: Mileage; CC: Child Care; TR: Travel Reimbursement;
AD: Accidental Death; DI: Death Indemnity; ES: Essential Services;

Note: Above benefit types are not applicable for all states.



June 21, 2010

Medical Bill - Loss History

Injured Person: Matt Bennett
Policyholder: Mr. BENJAMIN WALTON
Contact Person:
Total Loss Paid: \$ 172.00

Claim Number: 000105271225
Injured Person Id: 03
Date of Loss: 10/18/07
Co-Payment Amount: \$ 0.00

| Date Received | Date Paid | Provider | Payee/Payer | Date From | Date Thru | Check Number | Billed Amount | Paid Amount* | Benefit Claimed** |
|---------------|-----------|-------------------------------|-------------------------------|-----------|-----------|--------------|---------------|--------------|-------------------|
| 02/11/08 | 05/09/08 | MOUNTAIN VIEW FAMILY MEDICINE | MOUNTAIN VIEW FAMILY MEDICINE | 10/30/07 | 10/30/07 | 620175362 | \$ 93.00 | \$ 86.00 | MD |
| 04/01/08 | 05/09/08 | MOUNTAIN VIEW FAMILY MEDICINE | MOUNTAIN VIEW FAMILY MEDICINE | 10/30/07 | 11/29/07 | 620175361 | \$ 186.00 | \$ 86.00 | MD |

*Payment Amount Does Not Include Interest.

**Benefit Claimed

MD: Medical; WL: Wage Loss; RS: Replacement Services; FN: Funeral; SV: Survivor; ML: Mileage; CC: Child Care; TR: Travel Reimbursement;
AD: Accidental Death; DI: Death Indemnity ES: Essential Services;

Note: Above benefit types are not applicable for all states.

Brendon C. Taylor
Jared A. Steadman
MERRILL & MERRILL, CHARTERED
109 North Arthur - 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Idaho State Bar #6078, 7804

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|-----------------------------------|---|--------------------------|
| MATHEW R. BENNETT and BENJAMIN L. |) | |
| WALTON, |) | Case No. CV-08-4528-PI |
| |) | |
| Plaintiffs, |) | OFFER OF JUDGMENT |
| |) | |
| vs. |) | |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

To: Mathew R. Bennett and his attorney, Charles Johnson,

Pursuant to Rule 68 of the Idaho Rules of Civil Procedure, Defendant Nancy Patrick, by and through her attorneys of record, Merrill & Merrill, Chartered, hereby offer to allow Judgment to be taken against her by Plaintiff Mathew Bennett in the amount of Four Thousand Thirty-two and No/100 Dollars (\$4,432.00). By this offer, Plaintiff would be required to pay any and all remaining subrogation demands or claims of liens, any attorney fees allowable by contract or by law as well as the costs incurred to date. This Offer of Judgment is made for the purpose specified in Rule 68 and is not to be construed as an admission that this Defendant is liable in this action or as an admission that the Plaintiff has suffered any damage. This Offer of Judgment is governed entirely by the terms and conditions stated in Rule 68, specifically including, but not limited to, the provision



that the acceptance of this Offer of Judgment must be in writing within fourteen (14) days after the service of this Offer.

Dated this 18th day of May, 2010.

MERRILL & MERRILL, CHARTERED

By:


Brendon C. Taylor

CERTIFICATE OF SERVICE

I, Brendon C. Taylor, the undersigned, one of the attorneys for the Defendant, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Offer of Judgment was this 18th day of May, 2010, served upon the following in the manner indicated below:

Charles Johnson
JOHNSON OLSON CHARTERED
P.O. Box 1725
Pocatello, ID 83204

☐ U.S. Mail
☐ Hand Delivery
☐ Overnight Delivery
☒ Telefax


Brendon C. Taylor

Brendon C. Taylor
Jared A. Steadman
MERRILL & MERRILL, CHARTERED
109 North Arthur - 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Idaho State Bar #6078, 7804

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|---|---|--------------------------|
| MATHEW R. BENNETT and BENJAMIN L. WALTON, |) | |
| |) | Case No. CV-08-4528-PI |
| |) | |
| Plaintiffs, |) | OFFER OF JUDGMENT |
| |) | |
| vs. |) | |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

To: Matthew R. Bennett, Benjamin L. Walton and their attorney, Charles Johnson,

Pursuant to Rule 68 of the Idaho Rules of Civil Procedure, Defendant Nancy Patrick, by and through her attorneys of record, Merrill & Merrill, Chartered, hereby offer to allow Judgment to be taken against her by Plaintiffs as follows:

Plaintiff Matthew R. Bennet may take judgment in the amount of Three Thousand Thirty-two and No/100 Dollars (\$3,432.00). By this offer, Plaintiff would be required to pay any and all remaining subrogation demands or claims of liens, any attorney fees allowable by contract or by law as well as the costs incurred to date. This Offer of Judgment is made for the purpose specified in Rule 68 and is not to be construed as an admission that this Defendant is liable in this action or as an admission that the Plaintiff has suffered any damage. This Offer of Judgment is governed entirely

by the terms and conditions stated in Rule 68, specifically including, but not limited to, the provision that the acceptance of this Offer of Judgment must be in writing within fourteen (14) days after the service of this Offer.

Plaintiff Benjamin L Walton may take judgment in the amount of Six Thousand Four Hundred Eighty-Four and No/100 Dollars (\$6,484.00). By this offer, Plaintiff would be required to pay any and all remaining subrogation demands or claims of liens, any attorney fees allowable by contract or by law as well as the costs incurred to date. This Offer of Judgment is made for the purpose specified in Rule 68 and is not to be construed as an admission that this Defendant is liable in this action or as an admission that the Plaintiff has suffered any damage. This Offer of Judgment is governed entirely by the terms and conditions stated in Rule 68, specifically including, but not limited to, the provision that the acceptance of this Offer of Judgment must be in writing within fourteen (14) days after the service of this Offer.

Dated this 29th day of April, 2010.

MERRILL & MERRILL, CHARTERED

By: 


Brendon C. Taylor

CERTIFICATE OF SERVICE

I, Brendon C. Taylor, the undersigned, one of the attorneys for the Defendant, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Offer of Judgment was this 29th day of April, 2010, served upon the following in the manner indicated below:

Charles Johnson
JOHNSON OLSON CHARTERED
P.O. Box 1725
Pocatello, ID 83204

☐ U.S. Mail
☒ Hand Delivery *and/or*
☐ Overnight Delivery
☒ Telefax


Brendon C. Taylor

Charles Johnson
JOHNSON OLSON CHARTERED
419 West Benton
P.O. Box 1725
Pocatello, Idaho 83204-1725
Telephone: (208) 232-7926
Facsimile: (208) 232-9161
ISB No. 2464
E-Mail: cjlaw@cablone.net
Attorney for Plaintiffs

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2010 JUL 16 AM 10:14
BY *CW*
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|-----------------------|---|--|
| MATHEW R. BENNETT and |) | Case No. CV-08-4528-PI |
| BENJAMIN L. WALTON, |) | |
| |) | |
| Plaintiffs, |) | PLAINTIFFS' OPPOSITION TO DEFENDANT'S |
| |) | MOTION FOR REDUCTION TO JUDGMENT |
| vs. |) | |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

The plaintiffs, Mathew R. Bennett and Benjamin L. Walton, through counsel of record, hereby file their plaintiffs' opposition to defendant's motion for reduction of judgment. The plaintiffs would show the Court that there is no documentation in the form of a cancelled check to support the defendant's motion for reduction of a judgment, there was no counter-claim, third party claim or other claim filed by the defendant or Allstate against the plaintiffs for these costs, and there is no contractual or legal theory stated for the basis for the reduction of the judgment.

A. NO PROOF OF PAYMENT AT TRIAL

The defendant has filed a motion for reduction of judgment against plaintiff Benjamin Walton for \$1,000.00 for benefits paid by Allstate Insurance Company. This was allegedly paid under the

Medical Payments provision of plaintiff Walton's own insurance contract, which also happened to be with defendant's insurer Allstate Insurance Company.

The defendant has also filed a motion for reduction of the judgment as to the plaintiff Mathew Bennett for \$172.00 allegedly for benefits paid by Allstate Insurance Company to Mountain View Family Medicine. This was also allegedly paid under the Medical Payments provision of plaintiff Walton's own insurance contract, which also happened to be with Allstate Insurance Company.

However, in neither case was there any copy of any cancelled check which would show or demonstrate payment of these sums. There is simply attached a Medical Bill-Loss History for policy holder Benjamin Walton showing the payments.

Further, there was no evidence of this payment submitted at trial. There is no exhibit in evidence that shows this payment.

B. NO PRIOR CLAIM FILED

The defendant Nancy Patrick and insurer Allstate Insurance Company did not previously file an answer containing an affirmative defense of "payment" of the debt or claim. The defendant did not file a counter-claim, third party claim or any other claim against the plaintiffs for payment of these sums.

The failure to assert the affirmative defense of payment constitutes a waiver of that claim. See *Paloukos v. Intermountain Chevrolet Co.*, 99 Idaho 740, 744, 588 P.2d 939 (1978), on statute of frauds defense; *Resource Engineering, Inc. v. Siler*, 94 Idaho 935, 500 P.2d 836 (1972); numerous other citations omitted.

Any such claim they would have filed through a compulsory counter-claim, cross-claim or third party claim which if not brought before trial would be waived under the Idaho Rules of Civil Procedure 13(a). See *Blaser v. Cameron*, 116 Idaho 453, 776 P.2d 462 (Ct. App. 1989); numerous other citations omitted.

C. NO LEGAL THEORY CITED TO ALLOW RECOVERY

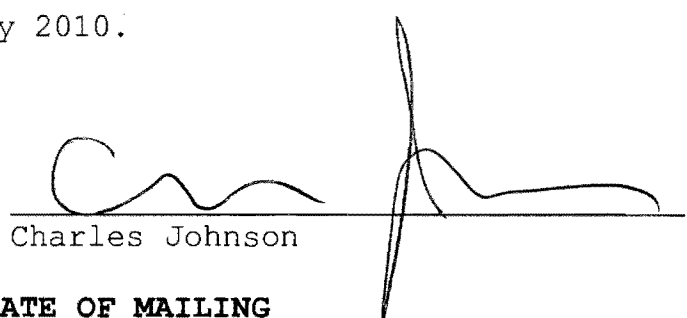
The defendant has not stated any legal theory upon which she would be entitled to recover for the medical payments provision of the plaintiff Benjamin Walton's own Allstate Insurance policy. There is no stated claim based on contribution, indemnity, subrogation or any other theory.

The plaintiff Walton paid for his medical payments coverage separately to Allstate Insurance Company. Allstate is not entitled and should not be entitled to repayment by plaintiff Walton for any amount that he was entitled to anyway under his policy from Allstate regardless of fault. Further, Allstate should not be entitled to recover against the plaintiff Bennett on plaintiff Walton's policy where he was not at fault at all in this case.

Finally, if this claim were allowed, the common fund doctrine would allow the plaintiff costs and attorney's fees for recovering this sum. See *Seiniger Law Office v. North Pacific Insurance Company*, 145 Idaho 241, 178 P.3d 606 (2008).

In conclusion, the defendant has cited no rule of civil procedure, Idaho statute or common law theory for the reduction of the judgment. Therefore the motion for reduction of the judgment should be denied by the Court.

DATED this 1st day of July 2010.



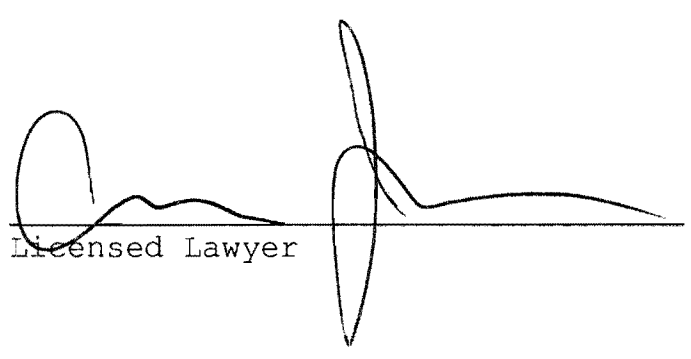
Charles Johnson

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing document by placing the same in the United States mail, postage prepaid, addressed as follows:

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
P.O. Box 991
Pocatello, Idaho 83204-0991

on this 1st day of July 2010.



Licensed Lawyer

Charles Johnson
JOHNSON OLSON CHARTERED
P.O. Box 1725
Pocatello, Idaho 83204-1725
Telephone: (208) 232-7926
Facsimile: (208) 232-9161
ISB No. 2464
E-Mail: cjlaw@cablone.net
Attorney for Plaintiffs

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2019 JUL -6 AM 10:11

BY *CW*
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|-----------------------|---|---|
| MATHEW R. BENNETT and |) | Case No. CV-08-4528-PI |
| BENJAMIN L. WALTON, |) | |
| |) | |
| Plaintiffs, |) | PLAINTIFFS' OBJECTION TO DEFENDANT'S |
| |) | MOTION FOR COSTS |
| vs. |) | |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

The plaintiffs, Mathew R. Bennett and Benjamin L. Walton, through counsel of record, hereby file their plaintiffs' objection to defendant's motion for costs. The plaintiff Walton would point out that he was clearly the prevailing party as to all prior offers made by Allstate, and is certainly entitled to all his costs and attorney's fees in pursuing his claim without objection from the defendant and is clearly not liable for any costs of the defendant at all. The plaintiff Bennett would point out that he was the prevailing party on: the first Allstate pre-trial offer under Idaho Code § 12-120(4), the second Allstate offer of Judgment under IRCP 68, and the "adjusted award" computed after the inclusion of interest, costs and attorney's fees under IRCP 68(b); so he is entitled to all his costs and attorney's fees, and is not liable for any costs of the defendant.

A. PLAINTIFF BENJAMIN WALTON

In this case the plaintiff Benjamin Walton was awarded over \$10,000.00 at trial. This was over twice as much as Allstate's final offer of \$5,000.00 made by Allstate before the case was filed under Idaho Code § 12-120(4). This was almost one-third more than the final Allstate mediation offer and offer of judgment of \$6,484.00. This award was significantly more than Allstate ever offered in the case even if the Court erroneously grants Allstate's motion to reduce the plaintiff Walton's judgment. He is clearly the prevailing party under Idaho Code § 12-120(4), Idaho Rule of Civil Procedure 54(d)(1) and Idaho Rule of Civil Procedure 68. There is no basis to reduce or deny any of the plaintiff Walton's claimed costs or attorney's fees and no theory under which he is liable for the defendant's costs and fees.

The Court should note that the damages awarded by the jury included the plaintiff Walton's total past medical expenses, his future medical expenses which the defendant's expert Dr. David Simon testified were reasonably necessary, but did not include any compensation for lost wages, and only a small portion of the plaintiff Walton's pain and suffering. These claims are virtually identical and not substantially different than what the plaintiff Walton claimed prior to the filing of this litigation under Idaho Code § 12-120(4).

The defendant's claim that different injuries and significant new damages were claimed at trial lacks factual and legal merit. The claims and damages claimed in the demand letter to Allstate and at the trial were virtually identical in all material respects.

The Idaho Supreme Court rejected a similar claim in the case of *Contreras v. Rubley*, 142 Idaho 573, 576-577, 130 P.3d 1111 (2006). The Court held that even an additional property damage claim of \$2,500.00 "was not significant enough to constitute a waiver of Contreras' right to attorney fees" under § 12-120(4). The Court found this sum not significant when compared to the total claim that was made and was not a factor in the decision made by the defendant's insurer to deny the claim.

The plaintiff Walton would agree that the failure to award him more damages for his pain and suffering was likely motivated by the conduct of the defendant's counsel as stated in the motion to alter or amend the judgment. However, rather than supporting any argument for denial of the plaintiff Walton's costs and attorney's fees (since no such authority exists), this is simply an argument in support of the plaintiff Walton's motion for additur, or to increase the award of his damages for pain and suffering to a more reasonable amount.

B. MATHEW BENNETT

The plaintiff Bennett was awarded about \$4,000.00 by the jury. This was almost twice as much as what Allstate offered to the plaintiff Bennett prior to litigation being filed under Idaho Code § 12-120(4), so the plaintiff Bennett was entitled to his costs and attorney's fees under that section. The jury award was also more than the first Allstate offer of judgment made on April 29, 2010 in this case. The plaintiff Bennett notes that under the law he was the prevailing party up to that point so Allstate cannot recover any of their costs incurred prior to that time.

Finally, Allstate made a second offer of judgment on May 18, 2010 to "Plaintiff Matthew Bennett in the amount of Four Thousand Thirty-Two Dollars (\$4,032.00). By this offer the plaintiff would be required to pay any and all remaining subrogation demands or claims of liens, and any attorney's fees allowed by contract or law as well as costs incurred to date." See Exhibit 167. This offer of judgment expressly included all attorney fees allowable by contract or by law as well as costs incurred to date" which is the same language included in the adjusted award under IRCP 68(b).

Once again, the plaintiff does not dispute that the jury awarded less to him than he requested at trial. The plaintiff has filed a motion for additur and to increase the award by \$1,000.00 for his reasonable future medical expenses as testified were reasonably necessary by Dr. Henry West and Dr. David Simon, and to double his grossly inadequate award for pain and suffering which was probably prompted by the defendant's conduct during the trial and closing argument as stated in the motion for additur, and to increase the award of these damages in this case.

It should also be noted that the defendant disputed the plaintiffs' medical bills until the eve of trial. There was no stipulation that these medical bills would be paid until the plaintiffs' noticed the depositions of their treating physicians for trial and the defendant admitted that based on the IME of Dr. David Simon these were all undisputable bills that should be paid.

The claims that plaintiff Bennett made in the demand letter to Allstate and the trial are virtually identical to his claims at trial. See *Contreras v. Rubley*, 142 Idaho 573, 576-577, *supra*.

The adjusted award for plaintiff Bennett is computed under IRCP 68(b) and is as follows:

| | |
|---|-------------|
| Judgment of Verdict: | \$3,978.47 |
| Pre-judgment interest of past medical bills: | \$ 530.15 |
| Court costs for Mathew Bennett pre-offer: | \$ 994.54 |
| Attorney's fees of Mathew Bennett before second offer of judgment: | \$10,227.50 |
| Total: | \$15,730.66 |

The plaintiff Bennett notes that if Allstate would have made an offer prior to the case being filed of over \$4,000.00 and/or an offer of judgment of \$4,000.00, plus accrued costs and fees to be set by the Court, which was declined by the plaintiff Bennett, then they may be entitled to their costs. Allstate should have doubled their offer before the case was filed, and increased this offer for costs and attorney fees after the case was filed, in their offers of judgment. Instead they spent almost the amount in controversy in Court costs to try to defeat the plaintiffs' claim. The failure to do so makes liability for the plaintiff Bennett's costs and attorney's fees clear under Idaho Code § 12-120(4) and IRCP 68(b).

The defendant claims that the plaintiff Bennett is not entitled to his costs as a matter of right, but is merely only entitled to half his filing fee, half the service fees, half the deposition and part of his deposition. However, the costs claimed by the plaintiff Bennett are those costs allowed as a matter of right under IRCP 54(d)(1) before the second offer of judgment in this case, and are as follows:

| | |
|--|----------|
| 1. Court filing fees (one half total): | \$44.00 |
| 2. One half of actual fees for the service of summons, and Trial Subpoena on Dr. Simon: | \$40.00 |
| 3. One half witness fees of Dr. Simon (Witness fee for Ron Rutten set out below) | \$27.50 |
| 4. Travel and time expenses to IME | \$100.00 |

| | |
|---|-----------------|
| 5. Expenses for Medical Records in evidence | \$100.75 |
| 6. Copies of trial exhibits pre-offer | \$15.30 |
| 7. Bonds, none (no charges) | |
| 8. Expert witness fees incurred pre-offer: | |
| Dr. Henry West (one half of total): | \$400.00 |
| (\$200.00 paid pre-offer) | |
| Physical Therapist Ron Rutten | \$50.00 |
| 9. Deposition charges: | \$216.99 |
| Amended Total of Post-Offer Costs | \$994.54 |

The plaintiff Bennett attaches to this opposition copies of all the bills on all the expenses he incurred in support of his costs claimed in this case. There can be no dispute that these costs were incurred before the second offer of judgment.

The defendant states that the IME travel and reimbursement expense was negotiated to be paid separately, and is not part of the standard Rule 54(d)(1) costs. However, these costs have not yet been paid by the defendant, and the defendant agreed that this would be an item of cost to be set after the trial. It is somewhat ironic that if the defendant had paid these costs they could not be claimed as costs of right at this time incurred before the second offer of judgment.

Finally, the defendant totally ignores any liability for attorney's fees to Mathew Bennett under Idaho Code § 12-120(4) and the first offer of judgment under IRCP 68. Further, and perhaps but most importantly, the defendant has totally ignored the plaintiffs' right to include attorney's fees incurred in the IRCP 68(b) "adjusted award" that were incurred before the offer of judgment. The Court is required to award these attorney's fees in this case to the plaintiff Bennett in the amount claimed by him at this time. The defendant twice denied liability in the first

summary judgment proceedings, and only admitted liability in the second summary judgment proceeding, and then contested the rest of the claims at trial. An award of attorney fees, although clearly mandated by the law, is especially appropriate here in the discretion of the Court.

C. OBJECTION OF PLAINTIFFS' TO SPECIFIC COSTS

The defendant's motion and memorandum of costs failed to recognize that there are two plaintiffs and each of their costs bills should have been reduced by one half. Further, the defendant has failed to allocate their costs between each plaintiff. The plaintiffs, however, have allocated and shown the Court that the costs have been split half to each plaintiff as shown on Exhibits 168 and 169.

The plaintiffs would note that if these costs claimed by the defendant are allocated one-half each by each plaintiff then this would be about \$1,322.40 per plaintiff. This means that at least \$1,300.00 of this should be allocated to the plaintiff Mathew Bennett as a reasonable award of costs under IRCP 68(b), and demonstrates that his claimed costs of \$994.54 is reasonable.

The plaintiffs each object to paying the deposition costs, expert witness fees, IME fees, and other expenses of the other plaintiff. The total costs claimed by the defendant are more than the costs and attorney fees of the plaintiff Bennett before the second offer of judgment was filed. A few more thousand offered to settle early would have saved the defendant tens of thousands in costs and attorney fees for both parties.

The defendant in this case has claimed the following sum for Dr. David Simon: Expert witness fees for Dr. David Simon's trial testimony of \$2,000.00, plus an additional \$1,750.00 for testimony at trial and his IME costs of almost \$5,105.00; for a total cost for Dr. David Simon alone of \$8,885.00. This is objectionable for several reasons.

First, this cost is grossly excessive for a claim of only \$14,000.00 at stake. These costs are far beyond those contemplated by the IRCP 54(d).

Second, the defendant apparently want both plaintiffs to pay all the expenses, which is totally contrary to the rules. They want the plaintiff Walton to pay all of the plaintiff Bennett's charges, and vice-versa.

The plaintiffs would note that if all the claims are considered in the aggregate, that they both beat the Allstate offers of Judgment of only \$10,916.00 with verdicts of \$14,009.39 (not even considering any additurs, interest, costs and attorney fees). They exceeded the Allstate offers by over 20%, showing the defendant is liable for both the plaintiffs' costs and attorney fees on an aggregate basis.

Finally, defendant also claims travel and witness expenses for the defendant herself to attend the trial. However, there is no provision in the Idaho Rules of Civil Procedure that allow this expense. In any case, over \$1,000.00 for lodging and car rental expenses is excessive given the facts of this case and the fact that liability was admitted and the defendant's attendance at trial was not even necessary at all.

D. CONCLUSION

In conclusion, the plaintiff Benjamin Walton objects to the payment of any of the defendant's costs in this case since he was clearly the prevailing party at law. The plaintiff Bennett also objects to the defendant's memorandum of costs since his "adjusted award" exceeded the Allstate offer of Judgment under IRCP 68(b).

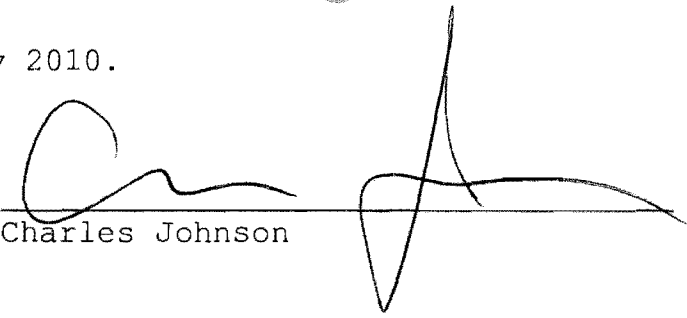
There is no showing that Allstate suffered any prejudice or would have changed their offers in any way, or would have ever considered more in settlement of this case, based on the plaintiffs' demands that were made before filing the complaint and at the trial. The Court is required to award both the plaintiffs' their costs and attorney fees under Idaho Code § 12-120(4) and IRCP 68 and IRCP 68(b).

The plaintiff Mathew Bennett would also point out that the defendant is not entitled to any of her costs incurred prior to filing of the second offer of judgment under IRCP 68 since the amount he was awarded exceeded that sum. Furthermore, since he was a prevailing party under IRCP 68(b) no costs should be awarded to the defendant at all.

Finally, the plaintiff Bennett objects to payment of any costs that are properly allocated to the plaintiff Walton. He objects to the fees of almost \$9,000.00 for Dr. David Simon as being grossly excessive and not allowed under the Idaho Rules of Civil Procedure, and to the expenses of about \$1,000.00 for Nancy Patrick to attend the trial.

WHEREFORE, defendant's motion for costs in this case should be denied in all material respects by the Court.

DATED this 1st day of July 2010.



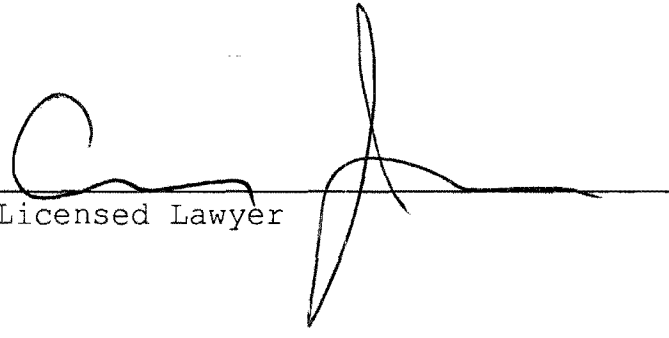
Charles Johnson

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing document by placing the same in the United States mail, postage prepaid, addressed as follows:

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
P.O. Box 991
Pocatello, Idaho 83204-0991

on this 1st day of July 2010.



Licensed Lawyer

JOHNSON OLSON, CHARTERED
P.O. BOX 1725
POCATELLO, IDAHO 83204-1725

USE P.O. BOX FOR MAIL
PHYSICAL STREET ADDRESS
419 WEST BENTON
POCATELLO, IDAHO 83204-1725

November 5, 2008

L. CHARLES JOHNSON, III
TELEPHONE: (208) 232-7926
FACSIMILE: (208) 232-9161
EMAIL: cjlaw@allidaho.com

Bannock County Clerk
BANNOCK COUNTY COURTHOUSE
624 East Center, Room #119
Pocatello, Idaho 83201

Re: Mathew R. Bennett and Benjamin L. Walton v. Nancy Patrick

Dear Clerk:

You will find enclosed an original VERIFIED COMPLAINT FOR PERSONAL INJURY DAMAGES IN AUTOMOBILE COLLISION AND DEMAND FOR JURY TRIAL, and the original and two (2) copies of the SUMMONS in the above referenced matter. You will also find enclosed our check in the amount of \$88.00 for filing fees in this case.

Please file the complaint in District Court, issue the SUMMONS and return the original and copies of the SUMMONS to this office in the enclosed self-addressed stamped envelope for further processing. Thank you.

If you have any questions or comments, please call or write.

Sincerely,



Charles Johnson

CJ/nv
Enclosure

c: Clients

Key Bank - Chec Bennett and Walton v. Patrick

88.00

JOHNSON OLSON, CHARTERED
Bannock County Clerk

54

Court Filing Fees

11/5/2008

88.00

15704

Key Bank - Chec Bennett and Walton v. Patrick

88.00

MSF5001-1

SAFEGUARD LITHO USA SFSL1GS CK7S08111S

TO REORDER, CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 208-522-1996

MS2SF019022

JOHNSON OLSON, CHARTERED
P.O. BOX 1725
POCATELLO, IDAHO 83204-1725

L. CHARLES JOHNSON, III
TELEPHONE: (208) 232-7926
FACSIMILE: (208) 232-9161
EMAIL: cjlaw@allidaho.com

USE P.O. BOX FOR MAIL
PHYSICAL STREET ADDRESS
419 WEST BENTON
POCATELLO, IDAHO 83204-1725

November 10, 2008

Bannock County Sheriff
Civil Division
P.O. Box 4666
Pocatello, Idaho 83205

Re: Mathew R. Bennett and Benjamin L. Walton v. Nancy Patrick;
Case No. CV 08 4528 PI

Dear Sheriff:

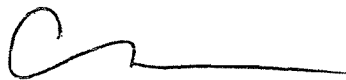
You will find enclosed an original and a copy of the SUMMONS and a copy of the VERIFIED COMPLAINT FOR PERSONAL INJURY DAMAGES IN AUTOMOBILE COLLISION AND DEMAND FOR JURY TRIAL regarding the case of Mathew R. Bennett and Benjamin L. Walton v. Nancy Patrick. Please proceed to serve the copy of the SUMMONS and complaint on Nancy Patrick whose last known address is: **1002 Samuel #102, Pocatello, Idaho**. You may use this address or any other address at your disposal to serve the defendant Patrick.

You will find enclosed our check for \$40.00 for costs and fees for this service of process. Please advise if there are any other charges and they will be paid on invoice.

Please then make your return of service according to law. We appreciate your cooperation in this regard.

If you have any questions or comments, please call or write.

Sincerely,



Charles Johnson

CJ/nv
Enclosure

c: Clients

Key Bank - Chec Walton v. Nancy Patrick

40.00

JOHNSON OLSON, CHARTERED

15719

Bannock County Sheriff

11/10/2008

52

Bannock County Sheriff

40.00

Key Bank - Chec Walton v. Nancy Patrick

40.00

MSF5001-1

TO REORDER, CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 208-522-1996

MSFSF019022

SAFEGUARD LITHO USA SFSL1GS CK7506111S

JOHNSON OLSON, CHARTERED
M&M Court Reporting Service, Inc.
53 Deposition Costs

10/15/2009

10000
445.18

Key Bank - Chec Inv Nos. 29709B5; 29714B5 & 2971

445.18

JOHNSON OLSON, CHARTERED

16686

M&M Court Reporting Service, Inc.

10/15/2009

53 Deposition Costs

445.18

Key Bank - Chec Inv Nos. 29709B5; 29714B5 & 2971

445.18

MSF5001-1

TO REORDER, CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 208-523-1996

M99SF019022

SAFEGUARD LITHO USA SFSL1GS CK75081115

(Return bottom portion with check)

Billed To: Charles Johnson
Invoice # 29709B5
Billed: 10/1/2009
Amount Due: \$197.81



**Court Reporting
Service, Inc.**

Fed Id No. 82-0298125

Billed: 10/1/2009

Billed to : Charles Johnson
Johnson Olson Chartered
419 West Benton
P.O. Box 1725
Pocatello ID 83204-1725

Boise, Idaho
421 W. Franklin Street
P.O. Box 2636 83701-2636
208 345-9611
208 345-8800 (fax)
mail m-and-m@gwestoffice.net

JOB INFORMATION (21634B4)

Invoice # 29709B5

SOUTHERN OFFICES
1 800 234-9611

Twin Falls, Idaho
208 734-1700
Pocatello, Idaho
208 233-0816
Ontario, Oregon
541 881-1700

NORTHERN OFFICES
1 800 879-1700

Coeur d'Alene, Idaho
208 765-1700
Spokane, Washington
509 455-4515

Case: Bennett/Walton v. Patrick
Taken: 9/24/2009
Witness : Nancy D. Patrick (**Orig. & 1 copy**)
Location : Merrill & Merrill Chtd
109 N. Arthur, 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991

Amount Due: \$197.81

(Return bottom portion with check)

Billed To: Charles Johnson
Invoice # 29709B5
Billed: 10/1/2009
Amount Due: \$197.81



**Court Reporting
Service, Inc.**
Fed Id No. 82-0298125

Billed: 10/1/2009

Billed to : Charles Johnson
Johnson Olson Chartered
419 West Benton
P.O. Box 1725
Pocatello ID 83204-1725

Boise, Idaho
421 W. Franklin Street
P.O. Box 2636 83701-2636
208 345-9611
208 345-8800 (fax)
mail m-and-m@qwestoffice.net

JOB INFORMATION (21636B4)

Invoice # 29714B5

SOUTHERN OFFICES
1 800 234-9611

Twin Falls, Idaho
208 734-1700
Pocatello, Idaho
208 233-0816
Ontario, Oregon
541 881-1700

NORTHERN OFFICES
1 800 879-1700

Coeur d'Alene, Idaho
208 765-1700
Spokane, Washington
509 455-4515

Case: Bennett/Walton v. Patrick

Taken: 9/24/2009

Witness : Mathew Robert Bennett *(Copy)*

Location : Merrill & Merrill Chtd
109 N. Arthur, 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991

Amount Due: \$118.08

(Return bottom portion with check)

Billed To: Charles Johnson
Invoice # 29714B5
Billed: 10/1/2009
Amount Due: \$118.08

RECEIVED

OCT - 7 2009

JOHNSON OLSON, CHTD

JOHNSON OLSON, CHARTERED
P.O. BOX 1725
POCATELLO, IDAHO 83204-1725

L. CHARLES JOHNSON, III
TELEPHONE: (208) 232-7926
FACSIMILE: (208) 232-9161
EMAIL: cjlaw@allidaho.com

USE P.O. BOX FOR MAIL
PHYSICAL STREET ADDRESS
419 WEST BENTON
POCATELLO, IDAHO 83204-1725

March 16, 2010

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
P.O. Box 991
Pocatello, Idaho 83204-0991

HAND DELIVERED

Re: Bennett and Walton v. Patrick; Case No. CV 08 4528 PI

Dear Mr. Taylor:

This acknowledges a call to our office and voice mail on Friday, March 12, 2010 in this case. You stated that apparently the Allstate claims adjuster could not be at the mediation set for Monday, March 15, 2010. We confirmed that you had called Judge Mitchell Brown and advised him of this fact and that we would have to reschedule the mediation. Please advise as to the available dates for your office and the Allstate claims adjuster (Barrett Saito), and I will make sure that my clients will be available. The available dates I presently have for the mediation are as follows: **March 30-31; April 2, 6, 8-9, and/or 19-30, 2010.**

First, this also acknowledges a call to our office from Ella and your "Defendant's Answers and Responses to Plaintiffs' Second Set of Interrogatories, Requests for Production and Requests for Admission" dated March 15, 2010. The response to the Request for Admission denied Number 33, on Exhibits 1-151, since you claim you did not have the exhibits. However, I would note that these Exhibits were included in our demand letter to Allstate under Idaho Code § 12-120(4), our office personally hand delivered a copy of the Exhibits to your office with our discovery replies a year ago in February of 2009, and these exhibits were also referred to in the Dr. David Simon report and referenced in your last discovery replies, for example in Answer to Interrogatory 18, "Dr. Simon reviewed all medical records of each plaintiff disclosed in this matter." Nevertheless, I am hand delivering another copy of the exhibits in this case to help facilitate the discovery responses; but assess our costs for another copy of these exhibits at \$30.60, 153 pages at 20 cents a page.

Second "Defendant's Answers and Responses to Plaintiffs' Second Set of Interrogatories, Requests for Production and Requests for Admission" dated March 15, 2010 did not respond to Interrogatories 14-17 and 20, Requests for Production 7, 10-12, and Request for Admission No. 33. Please consider this a meet and confer letter and advise if you will supplement these answers or a motion to compel should be filed under IRCP 37(a)(2).

Third, we would like to obtain your available dates for the taking of the treating physicians' depositions in this case. We

JOHNSON OLSON, CHARTERED

OFFICE ACCOUNT
419 W. BENTON P.O. BOX 1725
POCATELLO, IDAHO 83204
(208) 232-7928

Pocatello, Idaho 83204

92-155/1241

5/10/2010


PAY TO THE ORDER OF Bonneville County Sheriff

\$ **40.00

Forty and 00/100

DOLLARS

Bonneville County Sheriff
605 North Capital Avenue
Idaho Falls, Idaho 83402



MEMO

Bennett and Walton v. Patrick

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH ON PRISM HERE. RED IMAGE DISAPPEARS WITH HEAT.
⑈017213⑈ ⑈124101555⑈00 004048 5⑈

201003216

PAUL J WILDE
(208) 529-1350

BONNEVILLE COUNTY SHERIFF'S OFFICE

605 N CAPITAL
IDAHO FALLS, ID 83402

Paper ID: 201003216

PERSONAL RETURN OF SERVICE

BENNETT, MATHEW R & WALTON, BENJAMI

-- VS --

PLAINTIFF(S)

COURT: 6TH DIST. BANNOCK

CASE NO: CV084528PI

NANCY PATRICK

DEFENDANT(S)

PAPER(S) SERVED:

SUBPOENA DUCES TECUM

I, PAUL J WILDE, SHERIFF OF BONNEVILLE COUNTY, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 12TH DAY OF MAY 2010.

I HEREBY CERTIFY THAT, ON THE 12TH DAY OF MAY 2010, AT 4:08 O'CLOCK P.M., I, SCOTT J KIDWELL, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

***** DAVID C SIMON M D *****

PERSONALLY AT: 2860 CHANNING WAY SUITE 213 IDAHO FALLS ID 83404

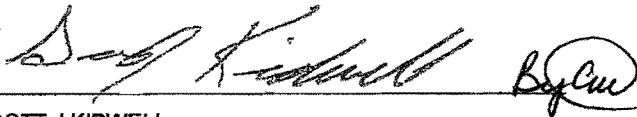
WITHIN THE COUNTY OF BONNEVILLE, STATE OF IDAHO.

DATED THIS 13TH DAY OF MAY 2010.

PAUL J WILDE
SHERIFF

| | |
|--------------------------|-------|
| SHERIFF'S FEES: | 40.00 |
| TOTAL COLLECTED TO DATE: | 40.00 |
| AMOUNT UNCOLLECTED: | 0.00 |

BY


SCOTT J KIDWELL
SERVING OFFICER

BY


CHARLENE MUNNS
RETURNING OFFICER

RECEIVED

MAY 18 2010

JOHNSON OLSON, CHTD

JOHNSON OLSON, CHARTERED
P.O. BOX 1725
POCATELLO, ID 83204-1725

JOHN OLSON, CHARTERED
P.O. BOX 1725
POCATELLO, IDAHO 83204-1725

L. CHARLES JOHNSON, III
TELEPHONE: (208) 232-7926
FACSIMILE: (208) 232-9161
E-MAIL: cjlaw@cablone.net

USE P.O. BOX FOR MAIL
PHYSICAL STREET ADDRESS
419 WEST BENTON
POCATELLO, IDAHO 83204-1725

April 26, 2010

Brendon C. Taylor
Jared A. Steadman
MERRILL & MERRILL, CHARTERED
P.O. Box 991
Pocatello, Idaho 83204-0991

bt@merrillandmerrill.com
js@merrillandmerrill.com
By Facsimile: 232-2499

Re: Bennett and Walton v. Patrick; Case No. CV.08 4528 PI

Dear Gentlemen:

This acknowledges our telephone conference on April 23, 2010 in this case. We agreed to take the depositions of the plaintiffs' treating physicians by videotape for use at trial as follows:
Dr. Evan Holmstead, 2006 Birdie Thompson Drive, April 30 11:30 a.m.
Dr. Richard Maynard, 500 South 11th Ave, Suite 303, May 7 11:30 a.m.
I am enclosing a formal deposition notice for these doctors.

Second, we agreed that the defendant would stipulate to the admission into evidence of the emergency room physician's records in lieu of having the testimony from the emergency room physicians and doctors. You stated you were working on a response to the Motion to Compel and would admit those documents into evidence. Please do so formally before the hearing on the Motion to Compel scheduled for May 5, 2010 at 1:30 p.m.

I am also enclosing a Subpoena for Dr. David Simon to testify live at trial. We will have Dr. Henry West there to testify at trial live as well.

We will also probably have the physical therapist for Mat Bennett, Ron Rutten, testify live at trial. I am still trying to set a time for the taking of the deposition of the MRI Doctor David Williamson and get a copy of the actual MRI.

If you have any questions or comments, please call or write.

Sincerely,


Charles Johnson

CJ/nv
Enclosure
c: Clients

JOHNSON OLSON, CHARTERED

Dr. David Simon

53

Deposition Costs

4/26/2010

17178

55.00

JOHNSON OLSON, CHARTERED

P.O. BOX 1725
POCATELLO, IDAHO 83204-1725

L. CHARLES JOHNSON, III
TELEPHONE: (208) 232-7926
FACSIMILE: (208) 232-9161
EMAIL: cjlaw@allidaho.com

January 14, 2010

USE P.O. BOX FOR MAIL
PHYSICAL STREET ADDRESS
419 WEST BENTON
POCATELLO, IDAHO 83204-1725

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
P.O. Box 991
Pocatello, Idaho 83204-0991

bt@merrillandmerrill.com

Re: Bennett and Walton v. Patrick; Case No. CV 08 4528 PI

Dear Brendon:

This acknowledges receipt of your letter dated December 21, 2009 requesting an Independent (Defense) Medical Examination of Mathew Bennett and Benjamin Walton in this case. The matter had slipped through the cracks over the holidays and my clients do not see the need for any kind of Independent Medical Examination since they claim no kind of permanent disability.

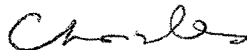
First, it would seem that an IME at this point is an unnecessary and costly expense, especially in light of the upcoming court ordered mediation. IRCP 26©) provides the court may issue a protective order to protect a person from annoyance, embarrassment, oppression, or undue burden or expense or that discovery be had on certain conditions. IRCP 35(a) provides that where the physical or mental condition of a person is in dispute then the court may order the party to submit to a physical or mental examination both for good cause shown on notice to the person to be examined which shall specify the time, place, manner, conditions and scope of the examination including the test or procedures to be performed. The party examined shall have the right to have a representative present. Further, the party has a right to payment of their expenses for the examination. Finally, the financial records of the examining physician may be requested in discovery.

Therefore, we would request that, if you really intend to have an IME, that you specify the good cause shown and the time, place, manner, conditions and scope of the examination, including any tests or procedures to be performed on the person. The plaintiffs would also request that they be compensated for their time off from work at the rate of \$100.00 each per day, plus \$50.00 for travel to Idaho Falls and back. The plaintiffs would each observe the examination of the other (depending on the nature of the examination that is conducted to preserve confidentiality), and record the examination on a tape recorder.

Finally, the plaintiffs have indicated that they may be available February 2, 2010 in the afternoon. The examinations would take then if necessary on and proper under IRCP 35(a).

If you have any questions or comments, please call or write.

Sincerely,



Charles Johnson

CJ/nv

c: Clients



P.O. Box 152472
Irving, Texas 75015-2472

Payment Cut Off: 03/09/2008
Statement No.: JOHN 103092008
IDI No.: 0B36

ACCOUNT ID#

JOHN4326391

Invoice Aging Summary

| | | | | |
|--------|-------|------|------|------|
| 210.19 | 60.44 | 0.00 | 0.00 | 0.00 |
|--------|-------|------|------|------|

46.1.12832 1 MB 0.360 70948S11.OCE



JOHNSON OLSON, CHARTERED
PO BOX 1725
419 WEST BENTON
POCATELLO ID 83204-3350

TAX ID NO. 94-3360691

CHARTONE MESSAGE CENTER

Dear Customer:

This statement is a summary of outstanding invoices on your account for copies of medical records provided to you by ChartOne. These invoices are DUE AND PAYABLE UPON RECEIPT. Please detach the remittance below to mail with your payment (or reference the invoice numbers on your payment). Payments made within 2 weeks prior to the above payment cutoff date may not be reflected on this statement. Please note our statements NOW INCLUDE PAYMENT BALANCES ON YOUR ACCOUNT (OA/AO #s) for which we need your assistance in identifying the invoice to which the payment should be applied. These may include payments that need to be applied to open fee approvals which are included on a separate statement. Your check # is referenced to assist in this process and we appreciate you calling us to resolve these or by emailing us at "payments@chartone.com". Please include your account ID, check # and invoice #(s) in your email in order for us to apply the payment balance appropriately. If you have any further questions regarding your account, please call Customer Care at (800) 399-8694.

Payment options include pay by mail - see remittance stub below,
or PAY ONLINE AT WWW.BILLPAY.CHARTRELEASE.COM where you can pay by credit card.

| DATE | INVOICE # | NAME | ACCOUNT # | DATE | NAME | TYPE | AMOUNT | PAID | OPEN | TOTAL |
|-------|--------------|------------------|---------------|----------|------------------|----------|--------|------|------|--------|
| 28/08 | 271244104533 | WALTON, BENJAMIN | XXX-XX-4117 / | 02/27/78 | JOHNSON, CHARLES | Portneuf | 60.44 | 0.00 | 0.00 | 60.44 |
| 13/08 | 271244104783 | CARDEN, JILL | XXX-XX-0986 / | 03/28/47 | JOHNSON, CHARLES | Portneuf | 124.44 | 0.00 | 0.00 | 124.44 |
| 18/08 | 271244104830 | BENNETT, MATHEW | XXX-XX-4117 / | 04/14/81 | JOHNSON, CHARLES | Portneuf | 85.75 | 0.00 | 0.00 | 85.75 |
| | | | | | | | | | | 270.63 |

Please detach here and return your payment for proper credit

ACCOUNT ID#

JOHN4326391

271244104533 271244104783 271244104830

Payment Cut Off: 03/09/2008
Statement No.: JOHN432639103092008

270.63

JOHNSON OLSON, CHARTERED
PO BOX 1725
419 WEST BENTON
POCATELLO ID 83204-3350

Charge It! If paying by Credit Card, please complete the following:

Check One: ☐ VISA ☐ MASTERCARD

Credit Card #: _____ Exp. Date: _____

Name/Signature of Cardholder: _____

Contact Phone #: _____ Amount Charged: \$ _____

Please make checks payable to:
ChartOne, Inc.
P.O. Box 152472
Irving, Texas 75015-2472

☐ CHECK HERE IF YOUR BILLING ADDRESS HAS CHANGED. PLEASE COMPLETE FORM ON REVERSE SIDE AND RETURN

Page 1 of 1

JOHNSON OLSON, CHARTERED

ChartOne, Inc.

51
51
51

Medical Costs
Medical Costs
Medical Costs

15018

03/14/2008

60.44
124.44
85.75



Invoice Date: 5/15/2008
Invoice No.: 3694
Tax ID No.: 20-3606109

Disclosed to:
Johnson, Olson
Attention: Charles Johnson
Pocatello, ID

RE: Mathew Bennett
File No:

RETURN BOTTOM PORTION WITH PAYMENT

Date Due: 05/30/08
Invoice Number: 3693
Disclosed to: Johnson, Olson
Attention: Charles Johnson

Administrative Fee
Total \$ 15.00

Send payment payable to:
ShopKo Stores Operating Co., LLC
PO Box 3016
Milwaukee, WI 53201-3016

Questions concerning this invoice should be directed to the Privacy Office
Administrator (866) 369-4472 Fax (920) 429-4444

T:\HIPAA\HIPAA - Ac\vel\Policy - Forms final\final forms\HIPAA Invoice Amount 15_00.doc

Received Time May. 15. 8:21AM

JOHNSON OLSON, CHARTERED
Shopko Stores Operat Co.

5/15/2008

15190

Shopko Pharmacy Medical Record

15.00

JOHN OLSON, CHARTERED
P.O. BOX 1725
POCATELLO, IDAHO 83204-1725

L. CHARLES JOHNSON, III
TELEPHONE: (208) 232-7926
FACSIMILE: (208) 232-9161
E-MAIL: cjlaw@cableone.net

May 11, 2010

USE P.O. BOX FOR MAIL
PHYSICAL STREET ADDRESS
419 WEST BENTON
POCATELLO, IDAHO 83204-1725

Dr. Henry West
West Clinic, Pa
1188 Call Place
Pocatello, Idaho 83201

By Facsimile: (208) 232-9412

Re: Mathew R. Bennett and Benjamin L. Walton v.
Nancy Patrick; Case No. CV 08 4528 PI

Dear Dr. West:

This acknowledges our telephone conference of May 11, 2010 regarding this case. We agreed that you would testify as a witness live at the trial on Wednesday, June 3, 2010 at 9:00 a.m.

You stated you would bill us for your testimony, but I am also prepaying \$200.00 in the enclosed check. Please bill us for any additional charges later.

We will prepare you for your testimony on Tuesday, May 25, 2010 at 5:30 p.m. We agreed to do this after work on that date.

Finally, I asked your office to fax me your resume' and we received it. Your resume' has been marked as Exhibit 125 for use at trial and I enclose a copy for your review.

If you have any questions or comments, please call or write.

Sincerely,


Charles Johnson

CJ/nv
Enclosure

JOHNSON OLSON, CHARTERED

17214

53 Dr. Henry West

Deposition Costs

5/11/2010

200.00

Key Bank - Checking Bennett & Walton v. Patrick

200.00

JOHNSON OLSON, CHARTERED

17214

53 Dr. Henry West

Deposition Costs

5/11/2010

200.00



THE WEST CLINIC
CHIROPRACTIC, ACUPUNCTURE
NATURAL MEDICINE

1188 CALL PLACE
POCATELLO, IDAHO 83201
PH. 208-232-3216
FAX. 208-232-9412
WEB: WWW.THEWESTCLINIC.NET
EMAIL: DRJ@THEWESTCLINIC.NET

June 3, 2010

Johnson Olson, Chartered
P.O. Box 1725
Pocatello, Idaho 83204-1725

Attention: Charles Johnson, esq

RE: Expert Testimony Mathew R. Bennett and Benjamin L. Walton
v. Nancy Patrick Case No. CV 08 4528 PI

9:00 a.m. – 11:00 a.m. 2 hours @ \$400. per hour \$800.00
Check 17214 prepay - \$200.00

Net Total Balance due \$600.00

Henry G. West, Jr. DC

JOHNSON OLSON, CHARTERED

Dr. Henry West

Deposition Costs

5/11/2010

17214

200.00

53

Key Bank - Checking Bennett & Walton v. Patrick

200.00

JOHNSON OLSON, CHARTERED
P.O. BOX 1725
POCATELLO, IDAHO 83204-1725

L. CHARLES JOHNSON, III
TELEPHONE: (208) 232-7926
FACSIMILE: (208) 232-9161
E-MAIL: cilaw@cableone.net

May 17, 2010

USE P.O. BOX FOR MAIL
PHYSICAL STREET ADDRESS
419 WEST BENTON
POCATELLO, IDAHO 83204-1725

Ron Rutten
Physical Therapist
Portneuf Physical Medicine
515 East Benton Street
Pocatello, Idaho 83201-6541

By Facsimile: (208) 239-1794

Re: Mathew R. Bennett and Benjamin L. Walton v.
Nancy Patrick; Case No. CV 08 4528 PI

Dear Mr. Rutten:

This acknowledges your call to our office on the taking of your deposition. You were surprised when the deposition did not take place, but we did not confirm the taking of your deposition.

I further advised that the defendant had stipulated to allow your medical records into evidence. Therefore, the deposition had been cancelled and vacated.

You stated you only provided treatment a few times to Mat Bennett. However, a doctor has recently advised that Ben Walton will probably need similar care and treatment, so we will probably also need to have you testify on the charges for this treatment at this time.


Therefore, I have determined that we will probably need your testimony at trial. We propose to have you testify on Wednesday, June 2, 2010 at 4:00 p.m.

Please forward your invoice to our office for testimony at trial. We will try to obtain payment of this invoice as costs after the trial in this case.

Therefore, I am enclosing a SUBPOENA DUCES TECUM for your scheduled testimony to take place on Wednesday, June 2, 2010 at 4:00 p.m. Please review the Subpoena and advise whether you will sign the ACKNOWLEDGMENT AND ACCEPTANCE OF SERVICE OF SUBPOENA DUCES TECUM, attend the trial, and return the signed acknowledgment to my office in the enclosed self-addressed stamped envelope.

If you have any questions or comments, please call or write.

Sincerely,



Charles Johnson

CJ/nv
Enclosure

c: Clients

Charles Johnson
JOHNSON OLSON CHARTERED
 419 West Benton
 P.O. Box 1725
 Pocatello, Idaho 83204-1725
 Telephone: (208) 232-7926
 Facsimile: (208) 232-9161
 ISB No. 2464
 E-Mail: cjlaw@cableone.net
 Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|-----------------------|---|---|
| MATHEW R. BENNETT and |) | Case No. CV-08-4528-PI |
| BENJAMIN L. WALTON, |) | |
| |) | |
| Plaintiffs, |) | ACKNOWLEDGMENT AND ACCEPTANCE |
| |) | OF SERVICE OF SUBPOENA DUCES TECUM |
| vs. |) | |
| |) | |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |

Ron Rutten, hereby acknowledges and accepts service of the attached SUBPOENA DUCES TECUM regarding the above-entitled case. Further, Ron Rutten waives any and all further service of process in this case under Idaho law and agreed to attend the trial at the time and date as stated on the Subpoena.

DATED this 18 day of May 2010.

Ron Rutten
 Ron Rutten

SUBSCRIBED AND SWORN TO before me, a Notary Public, by Ron Rutten on this 18 day of May 2010.

DEVAN WALTON
 (SEAL) NOTARY PUBLIC
 STATE OF IDAHO

Dwan Walton
 NOTARY PUBLIC FOR IDAHO
 Residing at: POCATELLO
 My Commission Expires: 7/30/2011

6-15-10

Fee for testimony by Ronald Rutter P.T.
is 50.⁰⁰.

Thanks,

R. Rutter P.T.

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
109 North Arthur - 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Idaho State Bar #6078

FILED
BANNOCK COUNTY
CLERK OF THE DISTRICT COURT

2010 JUN 7 AM 10:14

DEPUTY CLERK

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MATHEW R. BENNETT and BENJAMIN L.
WALTON,

Plaintiffs,

vs.

NANCY PATRICK,

Defendant.

Case No. CV-08-4528-PI

DEFENDANT'S OBJECTION TO
PLAINTIFFS' POST-TRIAL MOTIONS
FOR ADDITUR, INTEREST, COSTS AND
ATTORNEYS FEES

COMES NOW the Defendant, Nancy Patrick, by and through her counsel of record, Merrill & Merrill, Chartered, and objects to Plaintiffs' post-trial motions for costs, fees, additur and interest, pursuant to I.R.C.P. Rules 54 and 68. In support of this objection, Defendant relies on her own post-trial motions and affidavits and requests oral argument on the same.

Defendant hereby objects to all costs, fees, interest and additur claims asserted by Plaintiffs on the basis that Defendant was the prevailing party, as asserted in her own post-trial motions. Defendant responds to the individual allegations by the Plaintiff as follows:

Mathew Bennett's Claim for Additur should be Denied.

Mathew Bennett's claims for additur should be denied. The Defendant presented ample evidence to the jury that Plaintiff Bennett was recovered from his injuries by May of 2008. Dr. Simon offered expert testimony to that effect. The evidence accepted by the jury was that Mr. Bennett had recovered from his injuries by May of 2008, which was born out by the medical record showing he had made a complete recovery and was released from care. The jury clearly did not believe that 2 years later, his same injury resurfaced and caused him to need further treatment. The court should deny any additur

for Mr. Bennett's future medical care and pain and suffering. The standard is whether it shocked the Court's conscience.

The trial court is to refrain from substituting its view for that of the jury, but is instructed to examine the disparity between its own judgment and that of the jury and determine if it shocks the conscience of the court. *Id.* This is a subjective analysis based on the trial court's evaluation of the inadequacy or excessiveness of the jury's award. *Pratton v. Gage*, 122 Idaho 848, 852, 840 P.2d 392, 396 (1992). Therefore, the necessary degree of disparity differs with the facts of each case and with the trial court's sense of fairness and justice. *Collins v. Jones*, 131 Idaho 556, 558, 961 P.2d 647, 649 (1998). If in the trial judge's determination, his or her own award is so substantially different from that given by the jury such that the difference can only be explained by actions based on passion or prejudice, then a new trial or additur should be granted. *Id.*¹

Defendant respectfully submits that the Court should find its conscience is not shocked by the jury's decision to not allow future medical care or a higher general damage award to Plaintiff Bennett, and deny in total Plaintiff Bennett's Motion for Additur.

Benjamin Walton's Claim for Additur should be Denied.

Benjamin Walton's claims for additur should also be denied. Plaintiff Walton claims future medical bills for medication, medical care, interest and pain and suffering. With regard to future medications, including pain medicine. It was clear that Plaintiff did not have accurate testimony supported by medical experts regarding the costs for future medical care. Plaintiff Walton's wife testified that the whole family uses the pain medications they buy, and that she did not know the exact amount for future medications. There is also some question about the jury's award. It is not clear what future damages were actually awarded by the jury. For Plaintiff to speculate and demand specific future medical expenses now when it is not clear whether the jury awarded some future expense for the same items Plaintiff seeks via additur is improper. Again, because Plaintiff failed to disclose or offer as testimony specific dollar amounts for future medical care, it would be improper for the Court to grant an additur on that issue.

With regard to pain and suffering, the Court should not invade the province of the jury absent a finding that the award was so different than what the Court would have allowed that its conscience is shocked. Again, Defendant asks the Court to not make such a finding and let the verdict amount stand, subject to the reductions asked for by Defendant.

Plaintiffs claim several factors in seeking additur and/or new trial, including but not limited to mention of worker's compensation claim by Defendant. Defendant made mention of worker's compensation in response to testimony by Plaintiffs' witness that there was no other recourse to obtain medical care for one or more of the Plaintiffs. Defendant did not mention insurance, and

¹ *Schaefer v. Ready*, 134 Idaho 378 at 380, 3 P.3d 56 at 58 (2000).

argued that worker's compensation may have provided an additional source of payment for treatment since the accidents to Mr. Bennett occurred at the work place. The jury was not told whether there was insurance or an obligation to cover the injuries by Mr. Bennett's employers. However, the Court found this question improper and gave a strict instruction to the jury to not consider worker's compensation. The matter was not objected to in voir dire by Plaintiff, and it was actually raised by Plaintiff in closing arguments. Defendant did not again raise the issue after the strict instruction by the Court. Defendant asks the Court to make a finding that the matter was adequately addressed through its instruction and not find a ground for new trial or additur upon this argument now.

Plaintiff also claimed Defendant was allowed to make argument about a lack of medical record production. Defendant did nothing improper. Plaintiff cross-examined or directly examined Dr. Simon on his opinions that the record showed no prior back injury. Defendant pointed out that the records Dr. Simon reviewed were those produced by Plaintiffs. Interestingly, Plaintiff Bennett claimed a pharmacy expense for prescriptions for pain relievers in April of 2008, made by Dr. Evan Holmstead. However, his medical records submitted to Defendant did not include any records of visits to Dr. Holmstead in April of 2008. Plaintiff Bennett withdrew the expense, but the evidence, via testimony of Plaintiff Bennett was that he did not have the records for the April 2008 visit or any recollection of why he was prescribed pain medication from Dr. Holmstead on that occasion. This was fair evidence supporting an argument to the jury that Plaintiff's claims were only as valid as the evidence Dr. Simon was allowed to review. Again, Defendant admitted nearly all of the medical priors in this case. Plaintiff's counsel in response grabbed a handful of papers from his file, which included at least two deposition transcripts and claimed to the jury that he was holding medical records that represented all of Plaintiff's medical records. Defendant objected, and the Court properly upheld the objection. Clearly the records held were not all medical records, and Plaintiff Bennett's own testimony was that there was at least one record from April of 2008 that he had not submitted to Defendant. Defendant was free to speculate that there could have been more. Defendant's argument in closing on this subject was proper.

Defendant's argument regarding air bags was also proper. The photographs of the vehicles were offered via stipulation of the parties. Those photographs were the factual basis for this argument. The argument was properly founded on evidence stipulated by the parties.

Attorneys Fees should be Denied.

Plaintiffs claim attorneys fees under Idaho Code Section 12-120(4). Plaintiffs quoted a large section of Idaho Code § 12-120(4), but omitted the critical last paragraph:

If the plaintiff includes in the complaint filed to commence the action, or in evidence offered at trial, a different alleged injury or a significant new item

of damage not set forth in the statement of claim, the plaintiff shall be deemed to have waived any entitlement to attorneys fees under this section.²

Plaintiff alleged significant new and larger damage claims at trial. In their demand letter, each plaintiff advised Defendant's insurer that he had completed care under Dr. West and the only future care was for over-the-counter pain reliever. Each stated his future medical bills as \$2,500 for ongoing over-the-counter pain reliever.

At trial, Plaintiff Walton asked for over \$7,000 in future medical specials, including over \$2,000 for physical therapy, muscle relaxers and trigger point injections. This amount alone was greater than 2/3 of Plaintiff Walton's prior medical expenses, and of a nature completely different than what had been discussed in the 12-120 letter. Furthermore, the other future medical expenses nearly doubled, from \$2,500 at all times until a few weeks before trial, to \$4,972.80 at trial. This increase of greater than \$4,500 is a significant and new claim that requires the Court to deem Plaintiff Walton's 12-120 claim waived.

At trial, Plaintiff Bennett asked the jury to award him for a new exacerbation of his old injury. However, Dr. West testified that the new injury was in Mr. Bennett's sciatic area, and that his earlier treatment of Mr. Bennett was not recorded as being in his sciatic region. This new bill was nearly 10% of the admitted prior medical bills. More importantly, however, Plaintiff Bennett claimed he was not released from Dr. West's care, but would continue to need treatment on a "prn" basis, or as his condition warranted. This was a significant departure from Dr. West's earlier record releasing him from care. Indeed, Plaintiff Bennett argued to the jury that he would need future chiropractic care, and that his future medical expenses would be \$5,088. This was more than double the \$2,500 future special damages asserted in the 12-120 letter and at all times until a few weeks before trial. Thus, these significant new claims of past and future medical specials, added more than \$2,750, to his earlier claim of \$4,437.71 in medical specials past and future. Thus, Mr. Bennett has waived any claim for attorney fees under Idaho Code § 12-120(4).

CONCLUSION


Defendant respectfully requests the Court deny Plaintiffs' claims for additur, interest, costs and fees.

²Idaho Code § 12-120(4).

DATED this 14th day of July, 2010.

MERRILL & MERRILL, CHARTERED

By


Brendon C. Taylor
Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Brendon C. Taylor, the undersigned, one of the attorneys for the Defendant, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing DEFENDANT'S OBJECTION TO PLAINTIFFS' POST-TRIAL MOTIONS FOR ADDITUR, INTEREST, COSTS AND ATTORNEYS FEES was this 14th day of July, 2010, served upon the following in the manner indicated below:

Charles Johnson
JOHNSON OLSON, CHARTERED
P.O. Box 1725
Pocatello, Idaho 83204-1725

☒ U.S. Mail *or*
☒ Hand Delivery
☐ Overnight Delivery
☐ Telefax


Brendon C. Taylor

Charles Johnson
JOHNSON OLSON CHARTERED
P.O. Box 1725
Pocatello, Idaho 83204-1725
Telephone: (208) 232-7926
Facsimile: (208) 232-9161
ISB No. 2464
E-Mail: cjlaw@cablone.net

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2010 JUL 21 PM 2:49

BY *aw*
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|-----------------------|---|---|
| MATHEW R. BENNETT and |) | Case No. CV-08-4528-PI |
| BENJAMIN L. WALTON, |) | |
| |) | |
| Plaintiffs, |) | PLAINTIFFS' OBJECTION AND RESPONSE TO |
| |) | DEFENDANT'S OBJECTION TO PLAINTIFFS' |
| vs. |) | POST-TRIAL MOTIONS FOR ADDITUR, INTEREST |
| |) | COSTS AND ATTORNEYS FEES |
| NANCY PATRICK, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

The plaintiffs Mathew Bennett and Benjamin Walton, through their counsel of record, hereby file their objection and response to defendant's objection to plaintiffs' post-trial motions for additur, interest, costs and attorneys fees. The plaintiffs would show the Court that the defendant's response does not object to or dispute the plaintiffs' costs, pre-judgment interest, or amount of attorney fees. The defendant's objection to an award of any attorney fees should be over-ruled based on the fact that no new claims were asserted as discussed in the plaintiffs' briefs. The plaintiffs' motion for additur should be granted in the sound discretion of the Court so that Mat Bennett receives future medical care and both plaintiffs' receive reasonable compensation for their pain and suffering.

OBJECTION

1

A. LATE RESPONSE and WAIVER

The plaintiffs' MOTION FOR COSTS AND ATTORNEY'S FEES OF THE PREVAILING PARTY ON THE JURY VERDICT and MOTION FOR ADDITUR AND PRE-JUDGMENT INTEREST were filed in this case on June 18, 2010. In this case the defendant's objection to plaintiffs' post trial motions for additur, interests, costs and attorneys fees was filed on July 6, 2010, but not physically served or received by the plaintiffs until July 7, 2010 (see first page of document attached as Exhibit A).

Idaho Rule of Civil Procedure 54(b)(6) provides an objection to costs and fees must be filed *and served* on the adverse party within 14 days of service of the memorandum of costs or they are deemed waived. Idaho Rule of Civil Procedure 54(d)(6) states as follows:

Rule 54(d)(6). Objections to costs. Any party may object to the claimed costs of another party set forth in a memorandum of costs by filing and serving on adverse parties a motion to disallow part or all of such costs within fourteen (14) days of service of the memorandum of cost. Such motion shall not stay execution on the judgment, exclusive of costs, and shall be heard and determined by the court as other motions under these rules. Failure to timely object to the items in the memorandum of costs shall constitute a waiver of all objections to the costs claimed.

Therefore, the defendant's objection was filed and served late under IRCP 54(d)(6). The failure to timely file the objection constitutes a waiver of the objection and the costs that are claimed; see *Fearless Farris Wholesale, Inc. v. Howell*, 105 Idaho 699, 672 P.2d 577 (Ct. App. 1983); *Operating Engineers Local Union*

OBJECTION AND RESPONSE

370 v. Goodwin Construction Company of Blackfoot, 104 Idaho 83, 656 P.2d 144 (Ct. App. 1982); other citations omitted.

B. BENNETT'S MOTION FOR ADDITUR

The Court should clearly grant Mat Bennett's Motion for Additur. This is based on the testimony of all the experts that pain medications were reasonably medical necessary for Mat Bennett, along with some additional chiropractic care.

Further, Mat Bennett's award for pain and suffering was inadequate as a matter of law. The Court should double Mat Bennett's award for pain and suffering.

C. WALTON'S MOTION FOR ADDITUR

The plaintiff Walton did not file a Motion for Additur requesting any additional award for future medical care. However, like Mat Bennett, the award for pain and suffering was grossly inadequate and the Court should grant a motion for additur to increase and double that award.

D. NO OBJECTION TO COSTS

The defendant did not object to either plaintiffs' claim of any costs. Therefore, the Court should award the plaintiffs' costs claimed on their Exhibits 168 and 169 as follows: Mat Bennett \$1,025.08; Ben Walton \$895.98. See I.R.C.P. 54(d)(6), supra.

E. ATTORNEYS FEES

The defendant object to the attorneys fees of the plaintiffs under Idaho Code § 12-120(4). However, the plaintiffs are clearly

entitled to their attorneys fees as set out in their memorandum of costs and motion for attorneys fees. The plaintiffs did not make any new claims at trial and the jury awarded less than the amount plaintiffs' requested not more. The plaintiffs adopt by this reference as if set forth in full the Memorandum and Brief in Support of Motion for Costs and Attorney's Fees and Plaintiffs' Objection to Defendant's Motion for Costs and in particular the discussion on pages 2-3 of the later pleading which state as follows:

The Court should note that the damages awarded by the jury included the plaintiff Walton's total past medical expenses, his future medical expenses which the defendant's expert Dr. David Simon testified were reasonably necessary, but did not include any compensation for lost wages, and only a small portion of the plaintiff Walton's pain and suffering. These claims are virtually identical and not substantially different than what the plaintiff Walton claimed prior to the filing of this litigation under Idaho Code § 12-120(4).

The defendant's claim that different injuries and significant new damages were claimed at trial lacks factual and legal merit. The claims and damages claimed in the demand letter to Allstate and at the trial were virtually identical in all material respects.

The Idaho Supreme Court rejected a similar claim in the case of *Contreras v. Rubley*, 142 Idaho 573, 576-577, 130 P.3d 1111 (2006). The Court held that even an additional property damage claim of \$2,500.00 "was not significant enough to constitute a waiver of Contreras' right to attorney fees" under § 12-120(4). The Court found this sum not significant when compared to the total claim that was made and was not a factor in the decision made by the defendant's insurer to deny the claim.

F. POST JUDGMENT INTEREST

The defendant did not object to the plaintiffs' Motion for Additur for pre-judgment interest on their stipulated past medical

OBJECTION AND RESPONSE

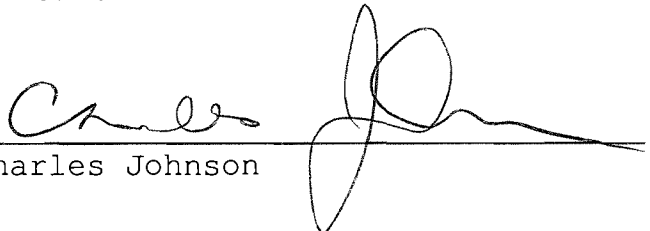
expenses. In fact, on the merits, there is really no valid objection to that motion under Idaho Code § 28-22-104. Therefore, the Court should grant the plaintiffs' motion for pre-judgment interest in the amounts as follows:

Matthew Bennett pre-judgment interest of \$530.15; and
Benjamin Walton pre-judgment interest of \$851.01.

G. CONCLUSION

WHEREFORE, the Court should grant the plaintiffs' Motion for Costs and Pre-Judgment interest since there is no opposition filed to those motions by the defendant. Further, the Court should grant the plaintiffs' motion for attorneys fees since their claims have always been the same since the § 12-120(4) 60 day demand letter, and the defendant did not object on any other basis or dispute the amount of the plaintiffs' costs and attorney fees. Finally, the Court should grant in its sound discretion the Motion for Additur to award Mat Bennett \$1,000.00 for additional medical expenses and double both plaintiffs' award for pain and suffering.

DATED this 20th day of July 2010.

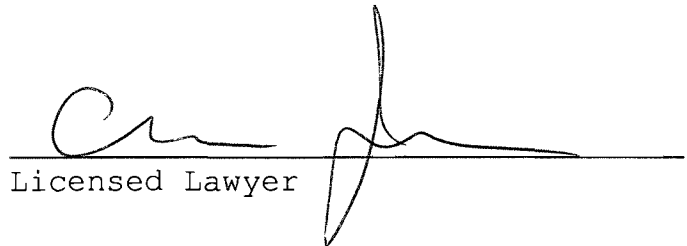

Charles Johnson

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing document by placing the same in the United States mail, postage prepaid, addressed as follows:

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
P.O. Box 991
Pocatello, Idaho 83204-0991

on this 20th day of July 2010.



Licensed Lawyer

Brendon C. Taylor
MERRILL & MERRILL, CHARTERED
109 North Arthur - 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Idaho State Bar #6078

RECEIVED

JUL -7 2010

JOHNSON OLSON, CPTD

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

| | | |
|---|---|----------------------------------|
| MATHEW R. BENNETT and BENJAMIN L. WALTON, |) | |
| |) | |
| Plaintiffs, |) | Case No. CV-08-4528-PI |
| |) | |
| vs. |) | DEFENDANT'S OBJECTION TO |
| |) | PLAINTIFFS' POST-TRIAL MOTIONS |
| NANCY PATRICK, |) | FOR ADDITUR, INTEREST, COSTS AND |
| |) | ATTORNEYS FEES |
| Defendant. |) | |
| |) | |

COMES NOW the Defendant, Nancy Patrick, by and through her counsel of record, Merrill & Merrill, Chartered, and objects to Plaintiffs' post-trial motions for costs, fees, additur and interest, pursuant to I.R.C.P. Rules 54 and 68. In support of this objection, Defendant relies on her own post-trial motions and affidavits and requests oral argument on the same.

Defendant hereby objects to all costs, fees, interest and additur claims asserted by Plaintiffs on the basis that Defendant was the prevailing party, as asserted in her own post-trial motions. Defendant responds to the individual allegations by the Plaintiff as follows:

Mathew Bennett's Claim for Additur should be Denied.

Mathew Bennett's claims for additur should be denied. The Defendant presented ample evidence to the jury that Plaintiff Bennett was recovered from his injuries by May of 2008. Dr. Simon offered expert testimony to that effect. The evidence accepted by the jury was that Mr. Bennett had recovered from his injuries by May of 2008, which was born out by the medical record showing he had made a complete recovery and was released from care. The jury clearly did not believe that 2 years later, his same injury resurfaced and caused him to need further treatment. The court should deny any additur

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Idaho State Bar #6078

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2010 JUL 22 PM 3: 04

BY
DEPUTY CLERK

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MATHEW R. BENNETT and BENJAMIN L.)
WALTON,)

Plaintiffs,)

vs.)

NANCY PATRICK,)

Defendant.)

Case No. CV-08-4528-PI

SUPPLEMENT TO DEFENDANT'S
POST-TRIAL MOTIONS AND
RESPONSIVE PLEADINGS

COMES NOW the Defendant, Nancy Patrick, by and through her counsel of record, Merrill & Merrill, Chartered, and hereby supplements her post-trial motions and responsive pleadings.

Defendant's counsel, during trial presented a motion in limine to the Court, which was taken up in chambers regarding a bankruptcy stipulation and order by Federal Judge Jim D. Pappas, that limited Plaintiffs' recovery to Defendant's auto insurance policy and within the policy limits of \$25,000 per person up to \$50,000 total. The Court reviewed and discussed the issue of the phrasing that Plaintiffs agreed that they would not pursue any recovery from Defendant in excess of that policy amount. The Court advised that the matter should be reserved until post-trial motions. Defendant believed he had filed her Second Motion in Limine and Affidavit of Brendon C. Taylor at the time that motion was argued in chambers. Counsel for Defendant reviewed the repository upon receipt of Plaintiff's most recent filing and noted that the documents were not on the repository listing. Defendant files herewith Defendant's Second Motion in Limine and the Affidavit of Brendon C. Taylor which supported that motion, both of which are attached to the Affidavit in Support of Post-Trial Supplement.

As the matter of the bankruptcy stay relief delayed the prosecution of this case, was negotiated by the parties, was raised during trial, and has been anticipated to be part of the post-trial hearings, Plaintiffs cannot claim any surprise, or prejudice to their case. Defendant respectfully requests the Court allow the consideration of the bankruptcy stipulation and subsequent order prohibiting Plaintiffs from pursuing claims exceeding Defendant's policy limits. Defendant moves to strike any claim in excess of her policy limit by either Plaintiff as violating the Bankruptcy Court Order, to which each Plaintiff stipulated.

Plaintiffs' assertions that Defendant's objections to be untimely are not true. Defendant filed her own motion to reduce judgment, motion for attorney fees and motion for costs after the Plaintiff's filings. In each of these filings, Defendant asserted herself to be the prevailing party and reserved the right to argue these matters in detail at the hearing. Furthermore, Defendant specifically challenged Plaintiff's right to attorneys fees upon the basis that Plaintiff Bennett did not beat Defendant's offer of judgment, and that both Plaintiffs asserted new and different medical damages at trial than what either had asserted in their 12-120 pre-suit demands. Defendant had also reserved the issue of the bankruptcy order limiting Plaintiffs' recovery during trial in chambers. Finally, Defendant filed her objection to costs and fees the day it was due and served a copy upon Plaintiff's counsel via mail. IRCP Rule 5(b) service is complete upon mailing. Through all of these efforts it was clear to Plaintiff well in advance of the hearing that Defendant was objecting to Plaintiff's post-trial motions and the grounds upon which the objections were made.

In the event timeliness is further considered by the Court, Defendant respectfully requests the Court exercise its discretion and allow an extension of time to consider all of Defendant's arguments. Numerous cases in Idaho hold the Court has ample authority to allow enlargement of time for filing within its discretion. See Ada County Hwy. Dist. Ex. Rel. Fairbanks v. Acarrequi, 106 Idaho 873, 673 P.2d 1067 (1983)(a court is allowed enlargement of time for filings under Rule 54(d) where no prejudice to the other party can be shown). See also Camp. v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (1995)(a court, in its discretion, may extend the time for filings under Rule 54(d)). See also Wheeler v. McIntyre, 100 Idaho 286, 596 P.2d 798 (1979). Finally, see Cunningham v. Bundy, 100 Idaho 456, 600 P.2d 132 (1979). With regard to the motion for new trial or additur, Rule 59(e) does not prescribe a specific time for filing an objection/response. Defendant

respectfully asks the Court to exercise its discretion to allow Defendant an extension, in the event it finds any of Defendant's filings untimely.

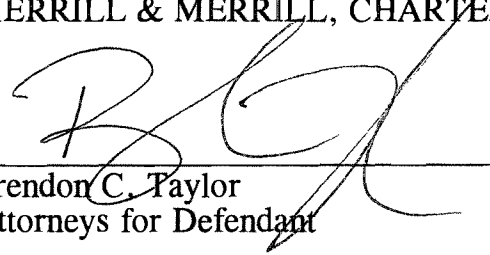
Defendant would also make note that the Court has discretion to reject any and all of Plaintiff's post-trial motions even if Defendant had not objected to them, or filed her own motions. See Fearless Farris Whsle., Inc. v. Howell, 105 Idaho 699, 672, P.2d 577 (1983).

WHEREFORE, Defendant respectfully requests the Court allow hearing on all issues presented by Defendant in this matter and exercise its discretion if needed to extend time or shorten time for filing of the same.

ORAL ARGUMENT IS REQUESTED.

DATED this 22nd day of July, 2010.

MERRILL & MERRILL, CHARTERED


Brendon C. Taylor
Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Brendon C. Taylor, the undersigned, one of the attorneys for the Defendant, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing SUPPLEMENT TO DEFENDANT'S POST-TRIAL MOTIONS AND RESPONSIVE PLEADINGS was this 22nd day of July, 2010, served upon the following in the manner indicated below:

Charles Johnson
JOHNSON OLSON, CHARTERED
P.O. Box 1725
Pocatello, Idaho 83204-1725

☐ U.S. Mail
☒ Hand Delivery
☐ Overnight Delivery
☐ Telefax


Brendon C. Taylor